

CONDENSED TRANSCRIPT

ERVIN E. HURLBERT, ET. AL.

VS.

W.R. GRACE & CO, ET. AL.

VIDEO DEPOSITION

OF

EARL D. LOVICK

(Volume 1)

Taken December 19, 1996

**Reported by Jolene Asa, RPR
Hedman & Asa Reporting
947 South Main
P.O. Box 394
Kalispell, Montana 59901
(406) 752-5751**

EARL D. LOVICK (VOL. 1)**Condenselt!™****HURLBERT VS. W.R. GRACE**

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3
4 ERVIN E. HURLBERT,) Cause No. DV-95-109
5 Plaintiff,)
6 LESTER LEWIS SKRAMSTAD and) Cause No. DV-95-127
7 NORITA IONE SKRAMSTAD,)
8 husband and wife,)
9 Plaintiffs,)
10 DONALD M. KAEDING and LOUISE) Cause No. DV-96-71
11 S. KAEDING, husband and wife,)
12 Plaintiffs,)
13 CARLENE J. (TONI) RILEY,) Cause No. DV-96-111
14 Plaintiff,)
15 vs)
16 W.R. GRACE & CO., a)
17 Connecticut corporation, I-IV,)
18 Defendants.)
19
20 VIDEO DEPOSITION
21 OF
22 EARL D. LOVICK
23
24 Taken at the Offices of Hedman & Asa Reporting
25 947 South Main
Kalispell, Montana
Thursday, December 19, 1996
9:04 a.m.

Reported by Jolene Asa, RPR, and Notary Public
for the State of Montana, Flathead County.

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4 STIPULATIONS
5
6 It was stipulated by and between counsel
7 for the respective parties that the deposition be
8 taken by Jolene Asa, Registered Professional
9 Reporter and Notary Public for the State of Montana,
10 residing in Flathead County, Montana.
11 It was further stipulated and agreed by
12 and between counsel for the respective parties that
13 the Deposition be taken at the time and place set
14 out on the caption and pursuant to the Montana Rules
15 of Civil Procedure.
16 It was further stipulated and agreed by
17 and between counsel for the respective parties and
18 the witness that the reading and signing of the
19 deposition would be expressly reserved.
20
21
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4 APPEARANCES
5
6 Appearing on behalf of the Plaintiff:
7 Mr. Jon L. Heberling, Esq.
8 McGarvey, Heberling, Sullivan & McGarvey, P.C.
9 745 South Main
Kalispell, MT 59901
10
11 Appearing on behalf of the Defendants:
12 Mr. Gary L. Graham, Esq.
13 Garlington, Lohn & Robinson, PLLP
14 P.O. Box 7909
Missoula, MT 59807-7909
15
16 Appearing on behalf of the Earl D. Lovick:
17 Mr. Robert A. Murphy, Esq.
18 Casner & Edwards, LLP
19 One Federal Street
20 Boston, MA 02110
21
22 Videographer:
23 Mr. Matthew Scotten
24 Video Data Services of Montana
25 P.O. Box 1206
Whitefish, MT 59937

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1 THE REPORTER: This is the video
2 deposition of Earl Lovick taken in the case of Ervin
3 Hurlbert versus W.R. Grace, Cause No. DV-95-109, a
4 Nineteenth Judicial District Court case in Lincoln
5 County. This deposition is being taken today at the
6 offices of Hedman & Asa Court Reporting in
7 Kalispell, Montana. The date today is December
8 19th, 1996, and the time is now 9:04 a.m.
9 I'd ask counsel to please identify
10 themselves for the record.

09:04:44 11 MR. HEBERLING: Jon Heberling
09:04:46 12 representing the Plaintiffs.

09:04:48 13 MR. GRAHAM: Gary Graham of
09:04:50 14 Garlington, Lohn & Robinson representing the
09:04:52 15 Defendant, W.R. Grace.

09:04:56 16 MR. MURPHY: Robert Murphy of
09:04:58 17 Casner & Edwards of Boston, Massachusetts
09:05:00 18 representing the witness, Mr. Lovick.

09:05:02 19 THE VIDEOGRAPHER: Matt Scotten of
09:05:04 20 Video Data Services of Whitefish.

21 THE REPORTER: And I'm Jolene Asa,
22 and I'm the court reporter, and I'm in Kalispell,
23 Montana.

24 I will now go ahead and swear in the
25 witness.

09:05:50 1 A Yes, sir, I have.
09:05:52 2 Q What has that consisted of?
09:05:58 3 A Well, it's consisted of various things.
09:06:02 4 It's consisted of doing some work on health matters
09:06:04 5 for the company. It's consisted of doing some tax
09:06:12 6 work for the company and some legislative lobbying.
09:06:16 7 Q Okay. And included in the health work,
09:06:18 8 have you given depositions?
09:06:18 9 A Yes, sir, I have.
09:06:22 10 Q When you give a deposition, are you paid
09:06:22 11 by the company?
09:06:22 12 A Yes, sir, I am.
09:06:24 13 Q How much?
09:06:28 14 A \$300 a day.
09:06:32 15 Q And has this been true for quite some time
09:06:34 16 for most of the depositions you've given?
09:06:34 17 A Yes, it has.
09:06:38 18 Q Are you paid also for preparation time for
09:06:38 19 the depositions?
09:06:38 20 A Yes, sir.
09:06:44 21 Q And Mr. Murphy is here as your personal
09:06:44 22 attorney, is he?
09:06:46 23 A Yes, he is.
09:06:46 24 Q Are you paying him?
09:06:48 25 A No, sir, I'm not.

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1 If you'll raise your right hand.

2
3 EARL D. LOVICK,
4 being first duly sworn to tell the truth, the whole
5 truth, and nothing but the truth, testified as
6 follows:
7

09:05:18 8 EXAMINATION

09:05:20 9 BY MR. HEBERLING:

09:05:22 10 Q Would you state your name for the record?

09:05:24 11 A My name is Earl D. Lovick.

09:05:26 12 Q And what is your address?

09:05:30 13 A 1021 Idaho Avenue, Libby, Montana.

09:05:30 14 Q What's your age?

09:05:32 15 A Seventy-six.

09:05:34 16 Q How long have you lived in Libby?

09:05:36 17 A I've lived there now since 1948.

09:05:38 18 Q Continuously?

09:05:38 19 A Yes.

09:05:42 20 Q And are you retired from W.R. Grace?

09:05:42 21 A Yes, sir, I am.

09:05:44 22 Q When did you retire?

09:05:46 23 A In 1983.

09:05:48 24 Q Since that time, have you done consulting
09:05:48 25 work for W.R. Grace?

09:06:50 1 Q Do you know who does?
09:06:52 2 A W.R. Grace is paying him.
09:06:54 3 Q And have you given trial testimony in the
09:07:00 4 Montana case of Carol Graham, a case of asbest
09:07:00 5 against W.R. Grace?
09:07:02 6 A Yes, sir, I believe I did.
09:07:04 7 Q And have you given trial testimony in the
09:07:08 8 Montana case of Millie Johnson, a case of --
09:07:08 9 A Yes, sir.
09:07:12 10 Q -- asbestosis against W.R. Grace?
09:07:12 11 A Yes, sir.
09:07:16 12 Q Have you testified in other trials outside
09:07:16 13 Montana?
09:07:18 14 A Yes, I have.
09:07:20 15 Q Could you tell us what they were?
09:07:26 16 A I testified in a trial in Rochester,
09:07:34 17 New York, and it was a personal injury case, I
09:07:40 18 believe. I testified in a trial in New York that
09:07:46 19 was a personal injury case, and I believe I
09:07:48 20 testified in trial in Seattle.
09:08:02 21 Q Were those all asbestosis cases?
09:08:02 22 A Yes, sir.
09:08:04 23 Q Have you given deposition testimony in t
09:08:04 24 Montana cases of Julius James Robertson, Orph
09:08:08 25 Smith, Tom DeShazer and Lawrence Carel?

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09:08:10 1 A I have given several depositions in
 09:08:12 2 Montana, and I can't -- I don't remember
 09:08:16 3 specifically whether those were included in them.
 09:08:18 4 Q Have you also given testimony in the case
 09:08:22 5 of James Gidley and Virgil Priest?
 09:08:26 6 A Again, I'm not sure that I have. It's
 09:08:30 7 possible. The names are both familiar to me, but I
 09:08:32 8 don't know whether I testified in their cases or not
 09:08:36 9 or gave depositions in those cases.
 09:08:40 10 Q One last case. Did you give deposition
 09:08:44 11 testimony in the case of Floyd Cole, Don Dutton, Roy
 09:08:50 12 McMillan, Ray Belangie, Ernest Peterson?
 09:08:52 13 A I really don't remember. I don't know.
 09:08:56 14 Q Do you receive a pension from W.R. Grace?
 09:08:58 15 A Yes, I do.
 09:09:02 16 Q I'll show you what's marked Exhibit A and
 09:09:06 17 represent to you that that is a list of the
 09:09:08 18 depositions we received that you've given in
 09:09:14 19 asbestos cases pursuant to a request for
 09:09:26 20 production. Do you recognize the list of cases as
 09:09:30 21 cases where you gave depositions? Does it appear to
 09:09:34 22 be a list of cases where you gave depositions?
 09:09:42 23 A Yes, it does. I can't say that I remember
 09:09:44 24 them all specifically, but it appears to be a
 09:09:46 25 similar list.

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09:09:48 1 Q Yeah. I understand that. Is it your
 09:09:52 2 custom and practice to review a deposition and sign
 09:09:56 3 it?
 09:09:58 4 A Yes, sir.
 09:10:00 5 Q Does Grace forward to you a copy of the
 09:10:02 6 deposition sometime after the deposition for your
 09:10:04 7 corrections, if any?
 09:10:06 8 A Yes, they do.
 09:10:08 9 Q And in the past have you made some
 09:10:08 10 corrections?
 09:10:10 11 A Yes, sir, I have.
 09:10:12 12 Q And do you review the depositions
 09:10:12 13 carefully?
 09:10:14 14 A Yes, sir.
 09:10:22 15 Q So if there's 22 depositions on this list,
 09:10:26 16 would it be fair to say that you -- for 22 times you
 09:10:30 17 have prepared for a deposition and given a
 09:10:32 18 deposition and reviewed the deposition?
 09:10:34 19 A Probably that's correct, yes, sir.
 09:10:38 20 Q Is it fair to say you're familiar with the
 09:10:44 21 history of asbestos exposure at Zonolite?
 09:10:44 22 A Yes, I would say that's true.
 09:10:48 23 Q Let's begin with the positions you had at
 09:10:50 24 W.R. Grace. Did you work during college there?
 09:10:56 25 A No, sir. I went to work after I completed

09:10:56 1 college.
 09:11:00 2 Q Did you work in 1946 as a truck driver?
 09:11:02 3 A Yes, sir, I did.
 09:11:04 4 Q Was that after college or before?
 09:11:08 5 A That was before I -- my college education.
 09:11:12 6 Q Was that a summer job, or did it extend
 09:11:14 7 longer than that?
 09:11:16 8 A Basically, a summer job. As I recall, it
 09:11:20 9 was like from March to September, when I started
 09:11:20 10 school.
 09:11:28 11 Q Okay. And then did you graduate from the
 09:11:28 12 University of Montana?
 09:11:28 13 A Yes, sir.
 09:11:28 14 Q Was that 1948?
 09:11:32 15 A I actually graduated in 1947.
 09:11:36 16 Q Okay. Then when did you go to work for
 09:11:36 17 Zonolite?
 09:11:40 18 A In March of 1948.
 09:11:42 19 Q What was your first position?
 09:11:42 20 A Accountant.
 09:11:46 21 Q Then in 1954 did you become an assistant
 09:11:46 22 manager?
 09:11:48 23 A Yes, sir.
 09:11:52 24 Q And how did your duties change in 1954?
 09:11:58 25 A Well, I just had more responsibility in

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09:12:00 1 working with the general manager and worked on
 09:12:08 2 assignments that he gave me, and the scope of my
 09:12:08 3 work broadened.
 09:12:10 4 Q So you had all of the same work and more
 09:12:10 5 work?
 09:12:12 6 A Yes, sir.
 09:12:14 7 Q And did you hold the position of assistant
 09:12:18 8 manager from 1954 to '68?
 09:12:18 9 A Yes, sir.
 09:12:22 10 Q And in 1968 what position did you assume?
 09:12:24 11 A General manager, Libby operation.
 09:12:26 12 Q Do you know what month that was?
 09:12:32 13 A No, sir, I don't, but it was in the
 09:12:36 14 midsummer. It could have been June or July.
 09:12:40 15 Q Okay. And, then, how long were you the
 09:12:40 16 general manager?
 09:12:44 17 A Until 1970, I believe.
 09:12:50 18 Q Could it have been '71?
 09:12:50 19 A Yes, sir, it could have been.
 09:12:56 20 Q And who became general manager in 1971?
 09:13:02 21 A Robert Olivario.
 09:13:04 22 Q And was that because of his expertise in
 09:13:06 23 planning and heading up the construction of the new
 09:13:06 24 wet mill?
 09:13:14 25 A Yes, sir.

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09:13:14 1 Q And, then, did you continue as manager of
 09:13:14 2 administration?
 09:13:16 3 A Yes, sir.
 09:13:18 4 Q And was that from 1971 to '83?
 09:13:18 5 A Yes, sir.
 09:13:30 6 Q What is vermiculite?
 09:13:34 7 A It's a micaceous mineral which is found
 09:13:38 8 near Libby, Montana, among other places.
 09:13:40 9 Q Is there, essentially, a mountain of it
 09:13:42 10 near Libby?
 09:13:44 11 A Well, there's a mountain that contains a
 09:13:44 12 good deal of it. It would not be true to say there
 09:13:50 13 was a mountain of vermiculite.
 09:13:52 14 Q In with the vermiculite are there some
 09:13:54 15 impurities?
 09:13:54 16 A Yes, sir.
 09:13:58 17 Q Is one of them tremolite, a form of
 09:14:00 18 asbestos?
 09:14:04 19 A In the deposit at Libby, yes, that's true.
 09:14:06 20 Q Now, I've seen mention of sizes of plus
 09:14:08 21 eight and minus eight for vermiculite. What does
 09:14:10 22 that mean?
 09:14:14 23 A That is a screen size, and plus eight
 09:14:22 24 means -- That is flakes of vermiculite that will not
 09:14:24 25 pass through an eight-mesh screen, and minus eight

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09:14:28 1 vermiculite is a size that will pass through an
 09:14:34 2 eight-mesh screen. And an eight-mesh screen means
 09:14:40 3 that there are eight meshes or divisions in an inch,
 09:14:42 4 but that does not mean an eighth of an inch,
 09:14:44 5 technically, because the inch includes the area
 09:14:50 6 which is taken up by the wires of the screen.
 09:14:54 7 Q Okay. What were some of the uses for the
 09:14:58 8 minus eight size vermiculite?
 09:15:02 9 A Well, there were many uses. The most
 09:15:08 10 common ones would be aggregates of one sort or
 09:15:14 11 another that went into concrete aggregate and
 09:15:14 12 insulating concrete, plaster aggregate, which became
 09:15:22 13 one of the ingredients of plasters, acoustical
 09:15:26 14 plaster and general plaster, and some of it was used
 09:15:30 15 in agricultural uses as a carrier for various
 09:15:40 16 chemicals and for block fill where it would be
 09:15:48 17 coated with a waterproofing material so that it
 09:15:52 18 would not absorb moisture and would be used to fill
 09:15:56 19 the cavities in concrete blocks that were used for
 09:15:58 20 building purposes. Those are some of the things it
 09:16:00 21 would have been used for.
 09:16:04 22 Q How about the plus eight vermiculite?
 09:16:06 23 A Basically, the largest use of plus eight
 09:16:14 24 vermiculite was used for a loose-fill insulating
 09:16:16 25 material, and that is material that was poured

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09:16:20 1 between the rafters and ceilings in residential
 09:16:20 2 buildings, primarily.
 09:16:24 3 Q Okay. Was vermiculite ore shipped out
 09:16:28 4 Libby, then, on railroad cars?
 09:16:28 5 A Yes.
 09:16:34 6 Q Were there also expanding plants?
 09:16:34 7 A Yes, sir.
 09:16:36 8 Q What's an expanding plant?
 09:16:40 9 A Well, before -- Basically and generally,
 09:16:42 10 before the vermiculite can be used, it must be
 09:16:48 11 processed, and the processing means exfoliating
 09:16:50 12 material, which is done in the expanding plant
 09:16:54 13 they're so called because, when the vermiculite
 09:16:58 14 treated in an expanding plant, it increases in size
 09:17:04 15 considerably, or it expands, which is not
 09:17:08 16 technically true. Technically, it exfoliates, but
 09:17:08 17 it increases in size.
 09:17:12 18 Q When it exfoliates, does it open up and
 09:17:14 19 expand sort of like popcorn?
 09:17:18 20 A No, sir. That's the difference. It opens
 09:17:24 21 up like -- The thing that causes it to expand or
 09:17:32 22 exfoliate is molecular water, and in pages in a
 09:17:34 23 which are made up of a lot of sheets, which is
 09:17:40 24 vermiculite is, the water between those sheets
 09:17:46 25 to steam, and it expands, and it increases in size

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09:17:48 1 in only one direction rather than overall.
 09:18:00 2 Q And was there an expanding plant in Libby?
 09:18:00 3 A Yes, sir.
 09:18:00 4 Q How long was that in operation?
 09:18:02 5 A Well, it was in Libby when I went to work
 09:18:06 6 there in 1948. It had been built some years before
 09:18:10 7 that. I don't know exactly when. I think during
 09:18:16 8 the war years. And it operated until about 1983.
 09:18:28 9 Q And, then, the product from the expanding
 09:18:30 10 plant, what did that look like?
 09:18:32 11 MR. MURPHY: Objection to the form.
 09:18:36 12 THE WITNESS: Well, I can't describe
 09:18:42 13 what it looked like. It looked like -- I don't know
 09:18:44 14 how to describe it.
 09:18:46 15 BY MR. HEBERLING:
 09:18:46 16 Q What color was it?
 09:18:48 17 A Golden color, basically, and it was very
 09:19:06 18 light, and it looked like a piece of golden flake
 09:19:08 19 which were fastened together.
 09:19:12 20 Q And the raw ore, when it was shipped
 09:19:12 21 what did it look like?
 09:19:16 22 A It was generally a dark green or a dark
 09:19:28 23 brown color, and it was in flakes of various
 09:19:28 24 depending on the size of the ore, and, again,
 09:19:32 25 hard to describe, but I can't say that it looked

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09:19:30 1 like sand because the makeup of it is that the
 09:19:42 2 circumference of these flakes would be larger than
 09:19:44 3 the thickness of them.
 09:19:48 4 Q And in the 1970s can you say how many
 09:19:50 5 expanding plants Grace had?
 09:19:56 6 A No. I don't remember for sure.
 09:19:58 7 Q Was it about 20 or more than 20, do you
 8 think?
 09:20:04 9 A I would estimate that in the '70s there
 09:20:08 10 were probably between 20 and 30 that Grace owned.
 09:20:12 11 Q What were the sources for vermiculite in
 09:20:12 12 the United States?
 09:20:16 13 A Well, the two principal sources -- but
 09:20:20 14 this is not exclusive -- is -- The largest source
 09:20:22 15 was from the Libby operation, and Grace had another
 09:20:26 16 mine in South Carolina, and there were a few other
 09:20:32 17 smaller producers, primarily in the Carolinas and
 09:20:34 18 Virginia.
 09:20:36 19 Q So did Grace own the two largest sources?
 09:20:38 20 A Yes, sir.
 09:20:42 21 Q Now, when you went to work in 1948 at
 09:20:50 22 Zonolite, did you know that it was dusty at the mine
 09:20:50 23 and at the mill?
 09:20:54 24 A After I'd been there, yes, sir, I knew
 09:20:54 25 that.

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09:20:58 1 Q Were you concerned even in 1948 regarding
 09:21:00 2 dust as a possible health hazard?
 09:21:00 3 A Yes, sir.
 09:21:06 4 Q Is it correct that from 1948 on you knew
 09:21:10 5 and the company always knew that there was a serious
 09:21:18 6 health problem because of the large amount of dust
 09:21:20 7 concentrated there?
 09:21:20 8 MR. GRAHAM: Objection. Calls for
 09:21:20 9 speculation and to form.
 09:21:22 10 Go ahead.
 09:21:22 11 THE WITNESS: Well, it was certainly
 09:21:26 12 known in some areas there were large concentrations
 09:21:30 13 of dust, and it's certainly common knowledge that
 09:21:38 14 too much dust of any kind is not a healthy
 09:21:38 15 situation.
 09:21:40 16 BY MR. HEBERLING:
 09:21:40 17 Q And did you share that concern even as
 09:21:40 18 early as 1948?
 09:21:42 19 A Yes, sir.
 09:21:46 20 Q When was the first time that it was known
 09:21:50 21 there was asbestos in the mine at Libby?
 09:21:52 22 MR. GRAHAM: Objection. Calls for
 09:21:54 23 speculation. Beyond the scope of this witness's
 09:21:56 24 capabilities.
 09:21:56 25 Go ahead and answer it to the extent you

09:21:58 1 can.
 09:21:58 2 THE WITNESS: I don't know when it
 09:21:58 3 was first known, but when I went to work there, it
 09:22:04 4 was generally known that there was asbestos in that
 09:22:08 5 deposit, because you could see it, and I would say
 09:22:10 6 that all employees knew that there was asbestos
 09:22:12 7 present.
 09:22:12 8 BY MR. HEBERLING:
 09:22:14 9 Q Do you have any personal knowledge that
 09:22:16 10 each employee knew that?
 09:22:18 11 A No. I can't say what each employee knew.
 09:22:24 12 Q Then you say you could see it in the
 09:22:28 13 deposit. When you saw the asbestos, what did it
 09:22:30 14 look like in the raw ore in the deposit?
 09:22:34 15 A It looked like gray rock.
 09:22:38 16 Q And what did the vermiculite or the other
 09:22:40 17 ore look like?
 09:22:44 18 A It looked like dark green or brown rock.
 09:22:46 19 Q So the asbestos was gray, and the others
 09:22:48 20 were green or brown? Is that fair?
 09:22:50 21 A Well, varied colors, depending on the --
 09:22:56 22 There were many other products in there other than
 09:23:00 23 asbestos and vermiculite, and the colors varied.
 09:23:04 24 Q And was the asbestos an impurity in the
 09:23:08 25 ore which the company tried to get out?

09:23:08 1 A Yes, sir.
 09:23:16 2 Q What was the range of percentage of
 09:23:22 3 tremolite asbestos in the ore at Libby while you
 09:23:24 4 were there?
 09:23:26 5 MR. GRAHAM: Objection. Vague and
 09:23:28 6 ambiguous, depending upon what constitutes ore.
 09:23:30 7 THE WITNESS: I don't know what that
 09:23:34 8 question means, because I don't know what you mean
 09:23:40 9 by the word "Ore".
 09:23:40 10 BY MR. HEBERLING:
 09:23:42 11 Q Okay. In terms of the ore coming into the
 09:23:48 12 dry mill, have you testified about what percentage
 09:23:52 13 tremolite asbestos was in that ore in the past?
 09:23:52 14 A Probably.
 09:23:56 15 Q What is your best estimate of the
 09:24:00 16 percentage asbestos in the ore coming into the dry
 09:24:00 17 mill?
 09:24:02 18 A I have no way of making an estimate,
 09:24:08 19 because it depended upon when this was and where the
 09:24:10 20 mining was actually occurring, because various parts
 09:24:14 21 of the mine contained considerably more asbestos
 09:24:18 22 than others, and on a particular day or particular
 09:24:22 23 time, there could be a big variation on the amount
 09:24:24 24 of asbestos that was in the yard.
 09:24:26 25 Q Okay. That's why I asked you for the

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09:24:28 1 range. What would the range be in percentages?
 09:24:34 2 A Well, that's a difficult question to
 09:24:40 3 answer, but the range could be from zero to --
 09:24:46 4 Theoretically, I suppose it could be up to maybe
 09:24:46 5 30 percent.
 09:24:56 6 Q And did you ever see samples -- the
 09:25:00 7 results of samples taken over the years, and did you
 09:25:02 8 see any as high as 30 percent?
 09:25:04 9 A I don't know that I did. I don't know.
 09:25:06 10 Q What was the highest you can recall you
 09:25:10 11 saw as a percentage asbestos in the ore coming into
 09:25:10 12 the dry mill?
 09:25:14 13 A I can't answer that question, because I
 09:25:18 14 don't know. Among other things, it was very
 09:25:22 15 difficult to determine by looking at it what
 09:25:24 16 percentage it would be, so it's not possible for me
 09:25:26 17 to answer the question.
 09:25:30 18 Q Were samples taken, and was the percentage
 09:25:34 19 tremolite analyzed at times?
 09:25:36 20 A Of what?
 09:25:38 21 Q Percentage of the ore coming into the
 09:25:40 22 mill.
 09:25:42 23 A Not really, because we had no way of
 09:25:46 24 testing that, no easy way of testing that. We had
 09:25:48 25 no accurate way of testing that.

09:27:24 1 MR. HEBERLING: I'm trying to
 09:27:26 2 discover what his position is.
 09:27:26 3 BY MR. HEBERLING:
 09:27:28 4 Q Did you give this answer?
 09:27:30 5 MR. MURPHY: Objection to
 09:27:34 6 characterizing Mr. Lovick as having a position.
 09:27:36 7 THE WITNESS: I have every reason to
 09:27:40 8 believe I gave that answer, and if I gave it, it was
 09:27:44 9 to the best of my ability in making an estimate, and
 09:27:46 10 as I said now, we had no accurate way of determin
 09:27:52 11 that.
 12 BY MR. HEBERLING:
 09:27:54 13 Q What was the approximate percentage of
 09:28:00 14 tremolite asbestos in the product going out of Libb
 09:28:02 15 in 1948?
 09:28:04 16 MR. MURPHY: Could you read that
 09:28:04 17 back, please?
 18 (The reporter then read back the
 19 preceding question.)
 09:28:20 20 THE WITNESS: I can't give an answer
 09:28:20 21 to that, because I don't recall. I don't think that
 09:28:22 22 we ever knew.
 09:28:22 23 BY MR. HEBERLING:
 09:28:24 24 Q Can you say what it was in the earliest
 09:28:32 25 years, say the early '50s?

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09:25:50 1 Q Have you testified in the past that the
 09:25:54 2 range of tremolite asbestos in the ore was between
 09:25:56 3 5 and 20 percent?
 09:25:58 4 A I don't know. Possibly.
 09:26:06 5 Q I'm now showing you a deposition,
 09:26:32 6 Plaza 600 Corporation versus W.R. Grace. Do you see
 09:26:34 7 the question, How much tremolite, as you understand
 09:26:38 8 it, is found when the vermiculite is being mined?
 09:26:40 9 Answer: It varies in the area of the mine
 09:26:42 10 where the mining activity is taking place, and the
 09:26:46 11 variation can be quite high, from probably less than
 09:26:50 12 5 percent to maybe as much as 20 percent in some
 09:26:50 13 areas.
 09:26:52 14 Were you asked that question, and did you
 09:26:54 15 give that answer?
 09:26:56 16 A I have every reason --
 09:26:56 17 MR. GRAHAM: I would object on the
 09:27:00 18 basis it's an attempt to impeach a witness on a
 09:27:04 19 totally different question than was asked at the
 09:27:08 20 time -- asked preceding the attempt to impeach,
 09:27:10 21 because the question initially asked was what the
 09:27:14 22 ore concentration or -- the concentration of
 09:27:20 23 tremolite in the ore going into the dry mill was,
 09:27:22 24 and this talks about the ore in the mine.
 09:27:24 25 But go ahead.

09:28:36 1 A No, I can't say what it was. Our
 09:28:38 2 estimates, I believe, would be probably less th
 09:28:40 3 one percent.
 09:28:52 4 Q From the same deposition, page 19, the
 09:28:58 5 question is, How much asbestos or tremolite
 09:29:00 6 the concentrate when it was ready to be shipp
 09:29:04 7 1948? And if you want to do it according to
 09:29:06 8 five grades, feel free to do that.
 09:29:08 9 Answer: I can't state definitely, but an
 09:29:10 10 estimate would have been -- In 1948 the amo
 09:29:14 11 concentrate would have varied in some grade
 09:29:20 12 possibly two or three percent to under one pe
 09:29:22 13 Is that the answer you gave at the time?
 09:29:36 14 MR. GRAHAM: Go ahead. Review it
 09:29:40 15 you wish, Earl.
 09:29:46 16 THE WITNESS: Yes. In answer to y
 09:29:48 17 question, undoubtedly, this is the answer I g
 09:29:50 18 that time, and I have no reason to dispute it
 09:29:52 19 BY MR. HEBERLING:
 09:29:54 20 Q And it's fairly consistent with what yc
 09:29:54 21 told me as well; correct?
 09:29:56 22 A Yes.
 09:29:58 23 Q So there were some times when it was
 09:30:00 24 little as one percent; correct?
 09:30:00 25 MR. GRAHAM: I'd object. It

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09:30:06 1 mischaracterizes the witness's testimony.
 09:30:08 2 BY MR. HEBERLING:
 09:30:12 3 Q Then, as of 1983, when you retired from
 09:30:16 4 Zonolite, what percentage of tremolite asbestos was
 09:30:20 5 there in the product shipped out of Libby as of '83?
 09:30:24 6 A Well, to the best of my recollection --
 09:30:30 7 Again, this would depend on the grade, which means
 09:30:34 8 the size of the concentrates, but it would be well
 09:30:34 9 under one percent.
 09:30:38 10 Q So did the company get better at removing
 09:30:40 11 the asbestos impurity from the vermiculite?
 09:30:42 12 A Yes, sir.
 09:30:46 13 Q Were they ever able to remove it all?
 09:30:46 14 A No, sir.
 09:30:50 15 Q What was your understanding of the
 09:30:54 16 approximate percentage asbestos in the dust in the
 09:31:00 17 air in the dry mill in the '50s and '60s? Again,
 09:31:02 18 you can answer with a range.
 09:31:06 19 MR. MURPHY: Objection. Vague and
 09:31:10 20 ambiguous and nonspecific.
 09:31:12 21 THE WITNESS: May I hear the question
 09:31:14 22 again, please?
 09:31:16 23 MR. HEBERLING: Go ahead.
 24 (The reporter then read back the
 25 preceding question.)

09:31:32 1 the asbestos tended to defiberize, if you will, and
 09:31:36 2 the small particles would become fibers and become
 09:31:38 3 airborne, more so than the other materials which
 09:31:42 4 were found in the mill feed.
 09:31:42 5 BY MR. HEBERLING:
 09:31:44 6 Q So would it be fair to say that the
 09:31:48 7 tremolite more readily generated dust than some of
 09:31:50 8 the other kinds of ore?
 09:31:52 9 A Yes, sir, that is fair to say.
 09:31:56 10 Q And was it your understanding that the
 09:34:00 11 operators could see the difference in the ore in the
 09:34:04 12 dry mill as it was coming in, whether it had a high
 09:34:06 13 percentage asbestos or not?
 09:34:06 14 A Yes, sir.
 09:34:18 15 Q What did the asbestos dust in the dry mill
 09:34:20 16 look like? What color was it?
 09:34:26 17 A The asbestos dust, all dusts, were
 09:34:28 18 extremely fine, and it would be too fine to identify
 09:34:30 19 a color.
 09:34:34 20 Q When you saw a pile of dust on the floor,
 09:34:36 21 what color was that pile?
 09:34:40 22 MR. MURPHY: Objection. Vague and
 09:34:44 23 ambiguous. Nonspecific as to time.
 09:34:46 24 THE WITNESS: I can't answer that
 09:34:46 25 question. I don't know.

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09:31:32 1 THE WITNESS: There was no way to
 09:31:36 2 accurately determine what percentage of the dust in
 09:31:42 3 the mill was asbestos and what percentage was other
 09:31:48 4 materials. There were various attempts made to
 09:31:54 5 determine that, and as I recall the tests which came
 09:32:02 6 back, it was estimated that the dust would vary from
 09:32:14 7 a percentage asbestos of maybe five or six percent
 09:32:16 8 and -- There was one test I recall where it was
 09:32:20 9 estimated to be 40 percent.
 09:32:20 10 BY MR. HEBERLING:
 09:32:26 11 Q Okay. So if the asbestos was, say, five
 09:32:32 12 percent or thereabouts in the raw ore, why would it
 09:32:36 13 be 20 or even 40 percent asbestos in the dust in the
 09:32:36 14 air in the dry mill?
 09:32:40 15 MR. MURPHY: Objection. Vague and
 09:32:48 16 ambiguous.
 09:32:50 17 THE WITNESS: There is a reason for
 09:32:56 18 that, and that is that the asbestos in the ore is
 09:33:02 19 all forms of asbestos, some of it in rather large
 09:33:06 20 chunks. In the dry mill the dust in the air is very
 09:33:10 21 fine particles, and the nature of the asbestos is,
 09:33:14 22 in the processing and concentration of the
 09:33:18 23 material -- In the dry mill this was done by
 09:33:20 24 crushing and screening, and the very nature of the
 09:33:24 25 asbestos was that, when this material is crushed,

09:34:46 1 BY MR. HEBERLING:
 09:34:48 2 Q Did it vary in color?
 09:34:48 3 A Oh, yes.
 09:34:50 4 Q It wasn't always a light color?
 09:34:52 5 A No.
 09:34:54 6 Q Was it sometimes a dark color?
 09:34:54 7 A Yes, sir.
 09:34:58 8 Q What year did W.R. Grace close in Libby?
 09:35:00 9 A 1990.
 09:35:00 10 Q And why was that?
 09:35:04 11 MR. GRAHAM: Objection. Calls for
 09:35:04 12 speculation.
 09:35:06 13 BY MR. HEBERLING:
 09:35:10 14 Q Have you discussed with Mr. Walter or
 09:35:14 15 Mr. McKay reasons for closing?
 09:35:22 16 A Well, the reasons for closing is that the
 09:35:24 17 markets didn't justify continuing that operation.
 09:35:34 18 Q And was Scott's Lawn Fertilizer, the Scott
 09:35:38 19 Company, a major customer of Zonolite?
 09:35:40 20 MR. GRAHAM: Objection. Vague as to
 09:35:42 21 time.
 09:35:44 22 THE WITNESS: At one time they were,
 09:35:44 23 yes, sir.
 09:35:46 24 BY MR. HEBERLING:
 09:35:50 25 Q Would that have been in the '70s and early

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09:35:50 1 '80s?
 09:35:54 2 A No, sir. Not in the early '80s. Prior to
 09:35:54 3 that.
 09:36:00 4 Q Okay. And did Scott pull out?
 09:36:02 5 A I don't know what that means.
 09:36:08 6 Q Did Scott no longer send orders into
 09:36:08 7 Zonolite for vermiculite?
 09:36:10 8 A Yes, sir.
 09:36:12 9 Q What's your understanding of the reason
 09:36:12 10 for that?
 09:36:14 11 A I don't know what the reason was.
 09:36:18 12 Q Did it have anything to do with asbestos?
 09:36:18 13 A I don't know.
 09:36:20 14 MR. GRAHAM: Objection. Asked and
 09:36:20 15 answered.
 09:36:22 16 BY MR. HEBERLING:
 09:36:26 17 Q Now, was one reason that Zonolite closed
 09:36:30 18 the asbestos contamination in the product?
 09:36:34 19 MR. GRAHAM: Objection. Foundation.
 09:36:34 20 Calls for speculation.
 09:36:36 21 THE WITNESS: Yes, sir. I don't
 09:37:04 22 know.
 09:37:06 23 BY MR. HEBERLING:
 09:37:06 24 Q I'm showing you a copy of your deposition
 09:37:14 25 which was taken May 27, 1992, and there's a

09:38:22 1 A I don't know that that's true. I don't
 2 know.
 09:38:22 3 Q Is it true that the concentrated product
 09:38:28 4 delivered to customers had less asbestos in it than
 09:38:32 5 the ore that the workers in Libby were working
 09:38:32 6 with?
 09:38:34 7 MR. GRAHAM: Objection. It's vague
 09:38:38 8 and ambiguous as to, The ore that the Libby worke
 09:38:40 9 were working with.
 09:38:42 10 THE WITNESS: I don't really know
 09:38:50 11 what your question means, but the amount of asbe
 09:38:52 12 that was in the concentrate that was shipped was
 09:38:56 13 certainly less than what was contained in the mill
 09:39:02 14 feed.
 09:39:04 15 BY MR. HEBERLING:
 09:39:06 16 Q Can you say how many tons of ore were
 09:39:08 17 mined per day in the '50s?
 09:39:10 18 A No. I don't recall.
 09:39:12 19 Q Or the '60s?
 09:39:14 20 A I don't recall.
 09:39:16 21 Q Or the '70s?
 09:39:16 22 A I don't recall.
 09:39:24 23 Q I'm now showing you your deposition take
 09:39:44 24 December 20, 1983.
 09:39:46 25 MR. MURPHY: Almost exactly thirteen

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09:37:16 1 question, Do you know why the market was gone?
 09:37:20 2 Answer: Well, I think of number of
 09:37:22 3 reasons, and one of them would have been asbestos
 09:37:26 4 contamination or believed to have been asbestos
 09:37:28 5 contamination, although the company had pretty much
 09:37:32 6 solved that problem, but many of the customers were
 09:37:34 7 afraid of the product.
 09:37:36 8 Did you give that answer?
 09:37:38 9 MR. MURPHY: Objection. Improper
 09:37:42 10 attempt at impeachment. Nothing inconsistent in the
 09:37:46 11 answers previously given.
 09:37:50 12 THE WITNESS: It's stated in the
 09:37:52 13 deposition. I have every reason to believe that I
 09:37:56 14 would have given it, and that would have been my
 09:37:58 15 understanding at that time.
 09:38:06 16 BY MR. HEBERLING:
 09:38:08 17 Q So the customers were afraid of the
 09:38:10 18 concentrated product, the product that was delivered
 09:38:12 19 to them?
 09:38:14 20 MR. GRAHAM: Same objection.
 09:38:16 21 Foundation. Calls for speculation.
 09:38:18 22 MR. MURPHY: And misstates his
 09:38:18 23 testimony.
 09:38:18 24 BY MR. HEBERLING:
 09:38:20 25 Q Go ahead.

09:39:46 1 years ago to the day.
 09:39:48 2 BY MR. HEBERLING:
 09:39:52 3 Q Is it fair to say your recollection may
 09:39:56 4 have been a little clearer in 1983 as to what
 09:39:58 5 done in the 1950s and '60s?
 09:40:00 6 A Yes, sir. That would be a fair statement.
 09:40:08 7 Q Okay. Did you give the answer, The
 09:40:08 8 quantity of material moved --
 09:40:10 9 MR. GRAHAM: I would object.
 09:40:12 10 Improper impeachment. If you're going to c
 09:40:14 11 let's read the questions.
 09:40:16 12 MR. HEBERLING: Okay. I'll go bac
 09:40:18 13 MR. MURPHY: If you're trying to
 09:40:20 14 refresh his recollection, you could ask him t
 09:40:22 15 something and see if it refreshes his recollec
 09:40:24 16 and ask him the question again, if that's wh
 09:40:26 17 you're trying to do.
 09:40:26 18 MR. HEBERLING: Okay.
 09:40:28 19 BY MR. HEBERLING:
 09:40:30 20 Q I'll read the question to you. How m
 09:40:32 21 mines have there been at the Libby facility
 09:40:32 22 years?
 09:40:32 23 One.
 09:40:34 24 What size mine is it?
 09:40:38 25 A physical size or quantity size?

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09-40:38 1 Question: Both.
 09-40:40 2 A physically -- I believe the mine area is
 09-40:44 3 approximately 400 acres. The quantity of material
 09-40:46 4 moved has varied over the period, but it has been as
 09-40:50 5 high as approximately 25,000 tons a day.
 09-40:54 6 Question: When did it reach the peak of
 09-40:56 7 25,000 tons a day, during what period?
 09-40:58 8 Answer: In the 1970s.
 09-41:00 9 How much were you turning out during
 09-41:04 10 the -- let's say 1950 to 1960 on average per day?
 09-41:06 11 Answer: This is a rough estimate, but I
 09-41:08 12 would think probably 15,000 tons.
 09-41:10 13 How about in the 1960s?
 09-41:10 14 About the same.
 09-41:14 15 Were those the answers you gave at the
 16 time?
 09-41:14 17 A Apparently, yes.
 09-41:18 18 Q And does that refresh your recollection as
 09-41:20 19 to what the quantities were?
 09-41:24 20 A Well, I can't say that it does, but if I
 09-41:26 21 gave those answers at that time, it must have been
 09-41:30 22 my belief that that's -- that they were correct.
 09-41:48 23 Q I'm now showing you Exhibit B, which is
 09-41:54 24 titled, A Manager's Time Line. I sent a copy to
 09-41:58 25 counsel, an advanced copy. Have you had a chance to

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09-41:58 1 review this?
 09-42:00 2 A Yes, sir, I have seen this.
 09-42:02 3 Q We put this together based on answers
 09-42:06 4 earlier, but we want to get it correct, and so if --
 09-42:10 5 The purpose is to determine, you know, who was in
 09-42:14 6 what position over the years, and having reviewed
 09-42:18 7 it, do you have any corrections to make? Does it
 09-42:20 8 appear correct?
 09-42:24 9 A Well, No, 1, where it says, "Back east.
 09-42:28 10 Supervisor who the plant manager reports to," I
 09-42:30 11 don't know what that means.
 09-42:34 12 Q Okay. You have a plant manager in Libby
 09-42:36 13 who is the head of operations there; correct?
 09-42:36 14 A Yes.
 09-42:40 15 Q And then we're looking for the person who
 09-42:44 16 the plant manager reports to.
 09-42:44 17 A Okay.
 09-42:46 18 Q So would it have been Mr. Myers up until
 09-42:48 19 1954?
 09-42:54 20 A Yes, sir.
 09-42:58 21 Q Now, was Mr. Myers in Libby for a period
 09-43:06 22 of time when you were first there in the early '50s?
 09-43:06 23 A Yes. When I -- No. When I came in 1948,
 09-43:08 24 Mr. Myers was in Libby, and he left some time after
 09-43:12 25 that. I don't know when. I think it would have

09-43:16 1 been in the early '50s he moved back to Chicago
 09-43:18 2 where he became president of Zonolite Company.
 09-43:24 3 Q Okay. And so did he become president in
 09-43:26 4 about 1954?
 09-43:34 5 A It was the early '50s. About 1954 could
 09-43:36 6 be correct. I don't know exactly -- the exact date.
 09-43:40 7 Q Okay. Having reviewed this managers' time
 09-43:46 8 line, have you found any places where we were
 09-43:48 9 incorrect in putting this together?
 09-43:52 10 A Well, you've got here Myers, Kelley,
 09-43:54 11 Sterrett and Vining on the top line, and over on the
 09-43:58 12 side you've got Walsh, Vining and Wolter. There
 09-44:00 13 were a couple of other names in there that are
 09-44:04 14 missing that at various times they were responsible
 09-44:06 15 for the Libby operation.
 09-44:08 16 And on the Kostic thing, from 1963 to
 09-44:12 17 1980, the safety supervisor, that is incorrect,
 09-44:16 18 because in the early 1970s the safety supervisor was
 09-44:20 19 Harry Eschenbach.
 09-44:26 20 Q Then did Mr. Kostic remain with W.R. Grace
 09-44:26 21 until about 1980?
 09-44:36 22 A He remained with W.R. Grace. I don't know
 09-44:40 23 when he left, but 1980 would probably be close.
 09-44:44 24 Q Okay. What position was he in after
 09-44:48 25 Mr. Eschenbach took the safety supervisor position?

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09-44:52 1 A He was still a safety engineer out of the
 09-44:54 2 Cambridge office, in our division office.
 09-45:00 3 Q But Mr. Eschenbach was his superior from
 09-45:00 4 early '70s on?
 09-45:02 5 A Yes, sir. I believe so.
 09-45:14 6 Q Can you say after 1968 who the Libby plant
 09-45:16 7 manager reported to? We have Vining there up until
 09-45:24 8 about '71. Do you happen to know who it was in the
 09-45:24 9 '70s?
 09-45:32 10 A Well, the chain of command was that --
 09-45:40 11 reported to O.F. Stewart who was in South Carolina,
 09-45:44 12 who, in turn, reported to H.A. Brown, who was a
 09-45:52 13 vice-president of our division, and, then, after
 09-45:56 14 H.A. Brown, there were a couple of other people.
 09-46:00 15 One of them's name was Tom Lyall, and another one
 09-46:04 16 was E.S. Wood, but I can't tell you the dates that
 09-46:06 17 they were there.
 09-46:10 18 Q So in the 1970s did the Libby plant
 09-46:14 19 manager report to Mr. Stewart, generally?
 09-46:16 20 A Yes.
 09-46:18 21 Q And how long was he with -- How long was
 09-46:24 22 he in that position, Mr. Stewart, up until the time
 09-46:24 23 you retired?
 09-46:30 24 A No. I think when I -- I think he was out
 09-46:32 25 of that position before I retired.

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09:46:46 1 Q Okay. Then, in the Libby section of this
 09:46:48 2 time line, do you have any corrections to make?
 09:47:04 3 A The only thing that I see here that I
 09:47:10 4 would question -- And I can't see anything that I
 09:47:16 5 recall as, basically, wrong on the positions above
 09:47:20 6 that, but the construction supervisor, Don Riley,
 09:47:26 7 from 1968 on, that is incorrect.
 09:47:30 8 Q Now, he would have -- Let's see. He
 09:47:34 9 stopped working in -- Didn't he stop in about 1986?
 09:47:40 10 A I don't know. I was gone, but I think
 09:47:42 11 that's about right, but prior to him was a man by
 09:47:46 12 the name of Tom DeShazer, who is actually
 09:47:50 13 construction supervisor, and I don't remember --
 09:47:54 14 recall what date Don Riley took over, but it wasn't
 09:47:56 15 in '68.
 09:47:58 16 Q You think it was later?
 09:47:58 17 A Yes.
 09:48:06 18 Q Okay. And that's the only correction that
 09:48:08 19 you're offering for the Libby section of the
 09:48:10 20 managers' time line?
 09:48:12 21 A I think so, yes.
 09:48:18 22 THE WITNESS: I wonder if it would be
 09:48:20 23 possible to have a short break?
 09:48:22 24 MR. HEBERLING: Sure.
 09:48:24 25 THE VIDEOGRAPHER: We're going off

09:53:30 1 Go ahead and answer to the extent you
 09:53:30 2 can.
 09:53:32 3 THE WITNESS: Well, of course I'm
 09:53:36 4 concerned about when any of my friends die
 09:53:40 5 reason, so in that respect the answer would be
 09:53:40 6 Yes.
 09:53:42 7 BY MR. HEBERLING:
 09:53:44 8 Q In about 1983 did you collect death
 09:53:48 9 certificates for ex-workers from Zonolite at the
 09:53:50 10 request of W.R. Grace?
 09:53:56 11 A Well, yes, I did. I did collect death
 09:54:00 12 certificates of ex-workers.
 09:54:02 13 Q And what is your understanding of what
 09:54:02 14 mesothelioma is?
 09:54:10 15 A It's a rare form of cancer.
 09:54:14 16 Q Are you aware that it's virtually always
 09:54:22 17 related to asbestos exposure?
 09:54:24 18 MR. MURPHY: Objection to the form
 09:54:24 19 THE WITNESS: As I understand,
 09:54:32 20 asbestos is usually attributed to be a cause of
 09:54:32 21 mesothelioma.
 09:54:32 22 BY MR. HEBERLING:
 09:54:32 23 Q Do you know workers who have died of
 09:54:34 24 mesothelioma?
 09:54:34 25 A Yes, sir.

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09:48:26 1 the record. It's approximately 9:48.
 09:48:28 2 (Brief recess.)
 09:52:22 3 THE VIDEOGRAPHER: Okay. We're back
 09:52:28 4 on the record. It's approximately 9:52.
 09:52:30 5 BY MR. HEBERLING:
 09:52:32 6 Q What is your understanding of what
 09:52:34 7 asbestosis is?
 09:52:40 8 A My understanding is it's a disease of the
 09:52:40 9 lungs.
 09:52:46 10 Q And to your knowledge have ex-workers at
 09:52:48 11 Zonolite died of asbestosis?
 09:52:52 12 A Well, to my knowledge, ex-workers of
 09:52:56 13 Zonolite who have died, one of the causes of death
 09:53:00 14 is asbestosis. I don't recall whether any of
 09:53:04 15 them -- their death certificate stated that that was
 09:53:06 16 the primary cause, but it would have been one of the
 09:53:08 17 contributing factors.
 09:53:10 18 Q Were some of these people friends of
 09:53:12 19 yours?
 09:53:14 20 A Yes, sir.
 09:53:16 21 Q And does the number of them with
 09:53:22 22 asbestosis as a cause of death concern you?
 09:53:24 23 MR. GRAHAM: I would object on the
 09:53:26 24 basis that it's irrelevant and immaterial to the
 09:53:28 25 issues of this lawsuit and prejudicial.

09:54:36 1 Q Can you give us some names?
 09:54:40 2 A McNair, Olson, Baker.
 09:54:46 3 Q Is that Virgil Olson or Vergel?
 09:54:48 4 A Verle, V-E-R-L-E.
 09:54:52 5 Q And Morland Baker?
 09:54:56 6 A Yes, sir. McNair, Michael McNair, I
 09:55:06 7 believe was his name, and those are the three that
 09:55:12 8 come to mind. There's at least one other that --
 09:55:14 9 Q Is there Clarence Peterson also?
 09:55:16 10 A Yes, sir, Clarence Peterson.
 09:55:18 11 Q And was there an Ernest Roberts who died
 09:55:22 12 of mesothelioma who is not a worker at W.R. Grace?
 09:55:24 13 A Yes, sir. To my understanding he was a
 09:55:28 14 Libby resident, and he died of mesothelioma, but
 09:55:30 15 had never been an employee of Grace.
 09:55:34 16 Q Do you know if he lived down near the
 09:55:36 17 railroad tracks and the bridge on the edge of town?
 09:55:38 18 A To my knowledge and memory, he did not
 09:55:40 19 live in that area, no.
 09:55:44 20 Q Do you know if he was exposed as a child
 09:55:46 21 playing on piles of the ore near the baseball
 09:55:48 22 fields?
 09:55:50 23 A I would have no idea about that. I don't
 09:55:54 24 know.
 09:55:54 25 Q Do you know what his exposure was?

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09:55:54 1 A No, sir.

09:55:56 2 Q And did Dale Thompson also die of

09:56:02 3 mesothelioma?

09:56:02 4 A I don't know.

09:56:04 5 Q How about Ed Wittlake?

09:56:06 6 A I don't know. I know both of them are

09:56:08 7 dead, but I don't know what the causes of their

09:56:10 8 death were.

09:56:12 9 Q In 1948 who was responsible for worker

09:56:14 10 safety?

09:56:18 11 A Well, in 1948 the general manager would

09:56:18 12 have been responsible.

09:56:24 13 Q What is your understanding of what an

09:56:26 14 industrial hygienist is?

09:56:34 15 A Well, an industrial hygienist would be one

09:56:42 16 who I expect would be an expert in industrial

09:56:42 17 hygiene.

09:56:44 18 Q Is there such a thing as an industrial

09:56:46 19 hygiene engineer?

09:56:46 20 A I don't know.

09:56:50 21 Q Do you know what is included within the

09:56:52 22 area of industrial hygiene?

09:56:56 23 A Well, I would think the broad definition

09:57:04 24 would be any malady or any disease which was

09:57:06 25 industrially caused.

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09:57:10 1 Q And would that also include dust control

09:57:10 2 and ventilation?

09:57:16 3 A I don't know what that has -- I don't know

09:57:18 4 what -- In that sense I would say, No.

09:57:24 5 Q Did you ever have an industrial hygienist

09:57:28 6 at Zonolite while you were there?

09:57:28 7 A No, sir.

09:57:32 8 Q Did you ever consult with one?

09:57:36 9 A Well, I don't know what that means either,

09:57:46 10 but both Peter Kostic and Harry Eschenbach, I

09:57:52 11 believe, would be industrial hygienists, and they

09:57:54 12 came to Libby and visited our operation, and we

09:57:54 13 consulted with them, of course.

09:57:56 14 Q And so Mr. Kostic would have come on board

09:58:00 15 for Zonolite in 1963 when Grace acquired Zonolite?

09:58:04 16 MR. MURPHY: Objection to the form.

09:58:06 17 MR. GRAHAM: I would -- Yeah.

09:58:08 18 THE WITNESS: He would have come on

09:58:12 19 board after -- He worked for the division of which

09:58:16 20 the Zonolite operation was a part of, and he would

09:58:20 21 have been -- become involved after W.R. Grace took

09:58:24 22 over.

09:58:24 23 BY MR. HEBERLING:

09:58:28 24 Q Did W.R. Grace acquire Zonolite? You say

09:58:30 25 they took over. What is your understanding of what

1 happened?

09:58:36 2 A Well, Zonolite became a part of W.R. Grace

09:58:38 3 by an exchange of stock, of Zonolite Company stock

09:58:40 4 for W.R. Grace stock.

09:58:46 5 Q Is it fair to say that W.R. Grace acquired

09:58:46 6 Zonolite?

09:58:48 7 MR. GRAHAM: Objection. Foundation.

09:58:52 8 THE WITNESS: It would have been a

09:58:54 9 merger, and I don't know if that's an acquisition or

09:58:56 10 not. I suppose it is, because W.R. Grace was the

09:59:00 11 larger of the two.

09:59:02 12 BY MR. HEBERLING:

09:59:08 13 Q Before 1963 do you recall consulting with

09:59:10 14 an industrial hygienist ever?

09:59:16 15 A I don't recall of it happening, no, sir.

09:59:20 16 Q In the 1950s and up to 1963, who was

09:59:24 17 responsible for dust control at Zonolite?

09:59:26 18 A The general manager at Libby would have

09:59:28 19 been responsible.

09:59:30 20 Q Was there an engineer who had

09:59:32 21 responsibility for that, or was it just under the

09:59:34 22 general responsibility of the general manager?

09:59:36 23 A Well, it would have been under the general

09:59:44 24 responsibility of the general manager, but the

09:59:46 25 general manager certainly could have assigned

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09:59:48 1 somebody to be responsible.

09:59:54 2 Q To your knowledge did that happen in the

09:59:56 3 1950s, up to 1963?

10:00:02 4 A Yes, sir. I think that those duties would

10:00:06 5 have been given to one of the -- probably the chief

10:00:10 6 engineer at Libby. One of them that would have had

10:00:12 7 that responsibility in that period would have been

10:00:14 8 Ray Kujawa.

10:00:18 9 Q Okay. Let's begin with Exhibit 12 in the

10:00:30 10 green book in front of you. Does that appear to be

10:00:40 11 a memo from J.A. Kelley to Mr. Friddle, Stewart and

10:00:42 12 Williams dated April 22, 1952?

10:00:54 13 A Yes, sir. I would say that's what it

10:00:54 14 appears to be.

10:01:00 15 Q Now, who was Mr. Kelley in 1952?

10:01:18 16 A In 1952, as I recall, J.A. Kelley was the

10:01:20 17 general manager of the South Carolina operation.

10:01:24 18 Q Okay. Was he higher up in the company

10:01:28 19 than the Libby plant manager?

10:01:36 20 A I don't know.

10:01:42 21 Q And who are Mr. Friddle, Stewart and

10:01:42 22 Williams?

10:01:48 23 A The only one that I have knowledge of

10:01:58 24 would be O.F. Stewart, and he was at the

10:02:06 25 South Carolina operation, and it is possible -- But

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<p>10:02:10 1 I don't know this for sure. It is possible that at</p> <p>10:02:12 2 that time Mr. Kelley was a vice-president of</p> <p>10:02:20 3 Zonolite Company, and Mr. Stewart could have been</p> <p>10:02:24 4 responsible for the South Carolina operation. I</p> <p>10:02:28 5 don't remember when that change took place, but it</p> <p>10:02:34 6 could have been in 1952 or prior to that, a little</p> <p>10:02:34 7 bit prior.</p> <p>10:02:40 8 Q Do you think you saw a copy of this memo</p> <p>10:02:40 9 in 1952?</p> <p>10:02:42 10 A No, sir. To my recollection I've never</p> <p>10:02:44 11 seen this before right now.</p> <p>10:02:48 12 Q In 1952 did you get any directives from</p> <p>10:02:54 13 the company as to dust, Something has got to be done</p> <p>10:02:54 14 now?</p> <p>10:02:56 15 A Not that I recall, no, sir.</p> <p>10:03:04 16 Q Do you recall efforts in 1952 to reduce</p> <p>10:03:06 17 the amount of dust at the operation in Libby?</p> <p>10:03:12 18 A Well, I can't recall anything specifically</p> <p>10:03:16 19 in 1952, but dust was always a concern, and there</p> <p>10:03:20 20 were always efforts being made to reduce the dust</p> <p>10:03:22 21 levels as much as possible.</p> <p>10:03:24 22 Q Do you remember any campaign in the early</p> <p>10:03:28 23 '50s to really put steam behind the effort to</p> <p>10:03:30 24 reduce the dust?</p> <p>10:03:32 25 MR. GRAHAM: Objection. Vague and</p>	<p>10:05:12 1 Q And does it appear that Mr. Myers is in</p> <p>10:05:18 2 Libby? Do you see "Libby" next to Mr. Myers's</p> <p>10:05:18 3 A Yes, sir.</p> <p>10:05:22 4 Q Who was Mr. Huxley?</p> <p>10:05:26 5 A Mr. Huxley was an engineer that was</p> <p>10:05:34 6 employed at Libby, and later on he was transferred</p> <p>10:05:40 7 to Chicago. He was the engineer that was in charge</p> <p>10:05:46 8 of expanding plants, design and -- particularly,</p> <p>10:05:48 9 rather than operation.</p> <p>10:05:54 10 Q Did you say he was a mining engineer?</p> <p>10:05:54 11 A No. I said he was an engineer.</p> <p>10:05:56 12 Q Do you know what kind of engineer?</p> <p>10:05:56 13 A No, sir, I don't. He was a graduate of</p> <p>10:06:00 14 the Montana School of Mines, but I don't know what</p> <p>10:06:02 15 his engineer designation would have been.</p> <p>10:06:12 16 Q Okay. Did you see this memo in Libby at</p> <p>10:06:12 17 or about its date?</p> <p>10:06:16 18 A I have no reason to think that I've ever</p> <p>10:06:16 19 seen this letter before right now.</p> <p>10:06:22 20 Q Okay. Does this appear to be the format</p> <p>10:06:26 21 of a memo that Mr. Myers would have produced in</p> <p>10:06:26 22 Libby?</p> <p>10:06:28 23 MR. GRAHAM: Objection.</p> <p>24 MR. MURPHY: Objection.</p> <p>10:06:28 25 MR. GRAHAM: Foundation.</p>
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<p>10:03:32 1 ambiguous.</p> <p>10:03:34 2 Go ahead and answer to the extent you</p> <p>10:03:34 3 can.</p> <p>10:03:36 4 BY MR. HEBERLING:</p> <p>10:03:38 5 Q Does anything stand out to you?</p> <p>10:03:40 6 A No, sir.</p> <p>10:03:48 7 Q Okay. Let's go to No. 13. Does this</p> <p>10:03:56 8 appear to be a letter by Paul Woolrich of the</p> <p>10:03:58 9 Department of Health, Education & Welfare, Public</p> <p>10:04:02 10 Health Service to Benjamin Wake, State of Montana</p> <p>10:04:04 11 Board of Health, dated October 31, 1955?</p> <p>10:04:20 12 A Did you ask a question? I'm sorry.</p> <p>10:04:24 13 Q Yes. Does it appear to be the letter as I</p> <p>10:04:24 14 described it?</p> <p>10:04:24 15 A Yes, sir.</p> <p>10:04:28 16 Q Do you think you saw this letter in the</p> <p>10:04:30 17 1950s in Libby?</p> <p>10:04:32 18 A I don't recall ever seeing this letter</p> <p>10:04:32 19 before right now.</p> <p>10:04:46 20 Q Okay. Please refer to Exhibit 14.</p> <p>10:04:48 21 A What number?</p> <p>10:04:50 22 Q 14, the next one. Does this appear to be</p> <p>10:05:02 23 a memo of J.B. Myers to Mr. John Huxley dated</p> <p>10:05:04 24 December, it looks like, 21, 1955?</p> <p>10:05:06 25 A Yes, sir.</p>	<p>10:06:30 1 Speculation.</p> <p>10:06:30 2 BY MR. HEBERLING:</p> <p>10:06:32 3 Q Okay. Were you familiar with how memos</p> <p>10:06:36 4 were prepared in Libby and sent to Chicago?</p> <p>10:06:38 5 A I don't know what that means. I would</p> <p>10:06:42 6 assume that they're prepared by a secretary.</p> <p>10:06:48 7 Q Did you have a standard format, for</p> <p>10:06:52 8 example, putting the addressee on the top and</p> <p>10:06:56 9 the name under that being the sender of the memo?</p> <p>10:06:56 10 A Yes, sir. That was standard.</p> <p>10:07:04 11 Q And as of 1955, were you in charge of</p> <p>10:07:06 12 record keeping for Zonolite?</p> <p>10:07:12 13 A I don't know that I was ever given that</p> <p>10:07:14 14 designation, no, sir.</p> <p>10:07:18 15 Q Well, as assistant manager, was record</p> <p>10:07:22 16 keeping something that was within your area</p> <p>10:07:22 17 responsibility?</p> <p>10:07:24 18 A I suppose you could say, Yes.</p> <p>10:07:28 19 Q And did the secretaries and whoever else</p> <p>10:07:32 20 worked in the office work under you, except</p> <p>10:07:32 21 plant manager, of course?</p> <p>10:07:34 22 A Yes, sir.</p> <p>10:07:38 23 Q Does this memo appear to have a format</p> <p>10:07:40 24 a memo that would have been sent out in 1955?</p> <p>10:07:44 25 MR. GRAHAM: Asked and answered.</p>

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10:07:46 1 MR. MURPHY: And, also, lack of
 10:07:50 2 foundation. The memo has nothing to do with the
 10:07:56 3 Libby mine and mill, and your questions make those
 10:07:58 4 assumptions, I believe, or imply that.
 10:07:58 5 MR. HEBERLING: The memo talks about
 10:08:02 6 "The danger of exposing our employees to asbestos
 10:08:04 7 dust". That's the subject of this case.
 10:08:04 8 MR. MURPHY: But if you read the
 10:08:06 9 whole thing, if you want to put this in fair
 10:08:10 10 context, it's talking about plants and the
 10:08:16 11 manufactured products at plants.
 12 THE WITNESS: I have not --
 10:08:18 13 BY MR. HEBERLING:
 10:08:22 14 Q Okay. Do you remember the -- Go ahead and
 10:08:24 15 make your comment.
 10:08:26 16 A All that I have read as of right now is
 10:08:28 17 the first sentence, which I will repeat. "I have
 10:08:30 18 previously written to you about the danger of
 10:08:34 19 exposing our employees to asbestos dust while they
 10:08:38 20 are manufacturing acoustical plastic," which has
 10:08:42 21 nothing to do with the asbestos which was found in
 10:08:44 22 Libby.
 10:08:48 23 Q In Libby in 1955 were you aware of the
 10:08:56 24 danger of exposing employees to asbestos dust?
 10:08:58 25 MR. MURPHY: Objection to the form.

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10:09:00 1 You mean at the Libby mine and mill? When you say
 10:09:02 2 "At Libby" -- I object. Vague and ambiguous.
 10:09:04 3 BY MR. HEBERLING:
 10:09:06 4 Q Okay. At the mine and mill in Libby, were
 10:09:10 5 you aware of the danger of exposing employees to
 10:09:12 6 asbestos dust as of 1955?
 10:09:16 7 A I don't recall, but I don't believe that I
 10:09:18 8 was aware of this hazard.
 10:09:22 9 Q So is it your belief that you hadn't
 10:09:26 10 discussed that with Mr. Myers as of 1955?
 10:09:26 11 MR. GRAHAM: I'd object. That
 10:09:32 12 assumes that Mr. Myers was aware of the dangers of
 10:09:34 13 asbestos dust in Libby as opposed to a different
 10:09:40 14 form of asbestos dust in the manufacturing process.
 10:09:42 15 Go ahead and answer it to the extent you
 10:09:42 16 can.
 10:09:44 17 THE WITNESS: I don't believe I ever
 10:09:48 18 would have discussed this with Mr. Myers, no, sir.
 10:09:50 19 BY MR. HEBERLING:
 10:09:52 20 Q Is Mr. Myers still alive?
 10:09:54 21 A To the best of my knowledge, yes.
 10:09:54 22 Q Do you know where he is?
 10:09:56 23 A San Diego.
 10:09:58 24 Q Do you know his address?
 10:09:58 25 A No, sir.

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10:10:04 1 Q What's his full name, John B. Myers?
 10:10:04 2 A Yes, sir.
 10:10:14 3 Q Do you know if Mr. Huxley had any training
 10:10:18 4 in control of industrial dust?
 10:10:20 5 A No, sir, I don't know.
 10:10:22 6 Q When he was in Libby, did he have anything
 10:10:24 7 to do with dust control?
 10:10:26 8 A No, sir. Not to my knowledge.
 10:10:30 9 Q What was his job when he was in Libby, to
 10:10:30 10 your understanding?
 10:10:34 11 A His job was on research and development of
 10:10:36 12 expanding plants.
 10:10:42 13 Q Okay. Let's refer to Exhibit 15, and does
 10:10:50 14 this appear to be a letter from Ben Wake, State of
 10:10:54 15 Montana, to Dohrman Byers, Public Health Service in
 10:10:58 16 Ohio, dated August 13, 1956?
 10:10:58 17 A Yes, sir.
 10:11:00 18 Q Do you think you saw this in Libby in the
 10:11:02 19 1950s?
 10:11:06 20 A I don't recall, no, sir.
 10:11:16 21 Q Go to Exhibit 16, and does this appear to
 10:11:20 22 be another letter from Mr. Wake to Mr. Dohrman Byers
 10:11:22 23 dated September 12th, 1956?
 10:11:24 24 A Yes, sir.
 10:11:28 25 Q Do you think you saw this letter in Libby

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10:11:30 1 in the 1950s?
 10:11:32 2 A No, sir, I don't recall.
 10:11:38 3 Q Okay. Let's go to Exhibit 17. Does this
 10:11:44 4 appear to be a letter from Mr. Wake to Mr. Bleich, I
 10:11:48 5 should say? Is that the proper pronunciation,
 10:11:50 6 Mr. R.A. Bleich?
 10:11:50 7 A Yes, sir.
 10:11:52 8 Q Dated September 21, 1956?
 10:11:54 9 A Yes, sir.
 10:11:58 10 Q And did you see this document in Libby in
 10:12:00 11 the 1950s?
 10:12:00 12 A Yes, sir.
 10:12:06 13 Q Did you see it at or about its date?
 10:12:06 14 A Probably, yes.
 10:12:24 15 Q Then go to Exhibit --
 10:12:26 16 MR. HEBERLING: I think we have an
 10:12:32 17 exhibit here that didn't get marked. Let's go off
 10:12:32 18 the record.
 10:12:36 19 THE VIDEOGRAPHER: We're going off
 10:12:40 20 the record approximately 10:12.
 10:12:42 21 (Discussion off the record.)
 10:13:32 22 THE VIDEOGRAPHER: We're back on the
 10:13:40 23 record. It's approximately 10:13.
 24 BY MR. HEBERLING:
 10:13:40 25 Q Okay. We solved that problem. Then

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10:13:44 1 attached to Exhibit 17, do you see a Montana State
 10:13:48 2 Board of Health report of an industrial hygiene
 10:13:56 3 study, August 8 to 9, 1956?
 10:13:56 4 A Yes, sir.
 10:14:00 5 Q Who was Ben Wake?
 10:14:06 6 A He was with the Montana Board of Health.
 10:14:12 7 Q Was he an industrial hygienist?
 10:14:14 8 A His title was industrial hygiene engineer.
 10:14:20 9 Q And what was your understanding of the
 10:14:24 10 purpose of this visit by Mr. Wake?
 10:14:30 11 A Well, it was customary for the State Board
 10:14:36 12 of Health to have an inspection of various
 10:14:38 13 industrial operations throughout the state
 10:14:46 14 periodically, and it was also their custom to visit
 10:14:50 15 the Libby operation periodically, and Mr. Wake
 10:14:54 16 visited Libby on several occasions to make
 10:14:56 17 inspections of the operation, and this would have
 10:15:02 18 been a report on his inspection, and he says it's a
 10:15:08 19 report of an industrial hygiene study at Libby in
 10:15:08 20 August of 1956.
 10:15:12 21 Q Okay. Then, on the first page after the
 10:15:16 22 cover page, in the first paragraph, do you see
 10:15:18 23 mention of, Mr. Lovick, assistant manager?
 10:15:20 24 A Yes, sir.
 10:15:22 25 Q And that's your?

10:17:00 1 plant"? Do you see that?
 10:17:00 2 A Yes, sir.
 10:17:10 3 Q What was your understanding of the word --
 10:17:12 4 what the word "Toxic" meant?
 10:17:18 5 A Well, it would be my understanding that it
 10:17:26 6 would mean hazardous or unhealthy.
 10:17:32 7 Q And "Considerable toxicity," did you
 10:17:36 8 discuss what that meant with Mr. Wake?
 10:17:36 9 A I don't recall.
 10:17:44 10 Q As a result of this report, did Mr. Bleich
 10:17:44 11 direct you to do anything?
 10:17:46 12 A Not that I recall, no, sir.
 10:17:58 13 Q Continuing under "Toxicity," it says,
 10:18:00 14 "According to Drinker and Hatch, the pathologic
 10:18:02 15 changes produced by asbestos are not like those of
 10:18:04 16 silicosis. The asbestos fiber group about the neck
 10:18:10 17 of the small air sacs in the lungs and stimulate the
 10:18:16 18 formation of a diffuse fibrosis." Do you see that?
 10:18:16 19 A Yes, sir.
 10:18:24 20 Q After obtaining this report, did the Libby
 10:18:28 21 management obtain a copy of Drinker and Hatch, wh
 10:18:34 22 is cited here, a book on industrial dust?
 10:18:34 23 A Not that I recall, no, sir.
 10:18:38 24 Q And then continuing, it says, "There is no
 10:18:40 25 definite migration or transportation of the dust

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10:15:22 1 A Yes, sir.
 10:15:28 2 Q Did you accompany Mr. Wake on this
 10:15:28 3 inspection?
 10:15:34 4 A Well, I don't recall, but I probably did
 10:15:38 5 not accompany him for the entire inspection. I may
 10:15:40 6 or may not have accompanied him for part of it.
 10:15:52 7 Q Okay. Let's refer to page three of the
 10:16:02 8 report. Do you see where it says, "The maximum
 10:16:06 9 allowable" -- This is three lines down from the top.
 10:16:30 10 "The maximum allowable concentration for asbestos
 10:16:30 11 is five million particles per cubic foot, and when
 10:16:32 12 the concentration of asbestos in the dust samples
 10:16:32 13 collected has been determined, further comments on
 10:16:34 14 concentrations will be made. At this time, however,
 10:16:34 15 and on the basis of the concentration of asbestos
 10:16:36 16 found in the dust, which varies from the company's
 10:16:38 17 records from 8 to 21 percent, it would appear that
 10:16:38 18 the maximum concentration of dust in the air should
 10:16:42 19 not be greater than 25 to 30 million particles per
 10:16:48 20 cubic foot." Do you see that?
 10:16:48 21 A Yes, sir.
 10:16:50 22 Q And then do you see three lines down
 10:16:52 23 under, "Toxicity - The asbestos dust in the dust in
 10:16:56 24 the air is of considerable toxicity and is a factor
 10:16:58 25 in the consideration of reducing dustiness in this

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10:18:46 1 particles to the lymph nodes and no formation of
 10:18:50 2 (fibrous) nodules. As the fibrosis increases, the
 10:18:52 3 reduction in lung area causes a serious decrease
 10:19:02 4 lung capacity or difficulty in breathing. Lanza,
 10:19:04 5 Citation No. 2, suggested that enlarged hearts not
 10:19:04 6 frequently in the cases of secondary asbestosis"
 10:19:06 7 Do you see that?
 10:19:06 8 A Yes, sir.
 10:19:08 9 MR. GRAHAM: Object to the form of
 10:19:10 10 questioning and the line of questioning on the ba
 10:19:12 11 that the document speaks for itself.
 10:19:14 12 Go ahead.
 10:19:16 13 THE WITNESS: Okay.
 10:19:16 14 BY MR. HEBERLING:
 10:19:18 15 Q Then, to your knowledge in 1956, after
 10:19:20 16 receiving this report, did the Libby management
 10:19:24 17 obtain a copy of the Lanza medical article titled
 10:19:32 18 "Effects of the Inhalation of Asbestos Dust on th
 10:19:32 19 Lungs of Asbestos Workers"?
 10:19:34 20 A I don't recall that they did, no, sir.
 10:19:36 21 Q To your knowledge did the company ask
 10:19:38 22 Mr. Wake for more information on this?
 10:19:40 23 A Not that I recall, no, sir.
 10:19:46 24 Q Did the company ask anyone for more
 10:19:48 25 information on this?

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10:19:46 1 A Not that I recall, no, sir.
 10:20:00 2 Q As of 1956, did you notice that workers
 10:20:02 3 who had been at Zonolite for some time had -- that
 10:20:04 4 there were workers who had been at Zonolite for some
 10:20:06 5 time that had some difficulty in breathing?
 10:20:10 6 MR. MURPHY: Read that back, please.
 10:20:12 7 MR. HEBERLING: I'll restate it.
 10:20:12 8 BY MR. HEBERLING:
 10:20:14 9 Q As of 1956, did you notice workers at
 10:20:18 10 Zonolite who had been there for, say, more than five
 10:20:20 11 years who had difficulty in breathing?
 10:20:22 12 A Well, I don't know that 1956 is a magic
 10:20:30 13 date, but, certainly, over time and during the time
 10:20:34 14 I was there and probably before 1956 we knew workers
 10:20:38 15 that we had that had difficulty breathing, yes, sir.
 10:20:42 16 Q Was anything done to identify who these
 10:20:46 17 workers were as of 1956?
 10:20:52 18 A I don't know what that means.
 10:20:54 19 Q Was any listing made or any tests -- were
 10:20:58 20 any tests done on workers to determine how serious
 10:21:02 21 their breathing difficulties may have been?
 10:21:04 22 A Well, at various times these workers were
 10:21:12 23 referred to doctors to evaluate their general health
 10:21:12 24 condition.
 10:21:18 25 Q And, say, before 1956 did you receive any

10:22:28 1 MR. GRAHAM: I would object. It
 10:22:30 2 calls for a medical conclusion.
 10:22:30 3 Go ahead.
 10:22:32 4 THE WITNESS: I have no knowledge of
 10:22:32 5 that, no.
 10:22:34 6 BY MR. HEBERLING:
 10:22:36 7 Q You didn't see any documents which related
 10:22:36 8 the disease to the dust?
 10:22:36 9 A No, sir.
 10:22:38 10 Q To your knowledge, in 1956 did the company
 10:22:38 11 consult with any doctors as to the disease
 10:22:38 12 asbestosis?
 10:23:02 13 A Not that I recall, no, sir.
 10:23:14 14 Q Did you know what it was before 1956?
 10:23:14 15 A No, sir, I don't --
 10:23:16 16 Q Was this report your first knowledge of
 10:23:16 17 what asbestosis was?
 10:23:20 18 A To the best of my recollection, this
 10:23:30 19 report is the first that we or I knew of the dangers
 10:23:32 20 of asbestos in the workplace.
 10:23:38 21 Q So as of 1956, the company knew there was
 10:23:40 22 asbestos in the dust; correct?
 10:23:42 23 A Yes, sir.
 10:23:44 24 Q And the company also knew that asbestosis
 10:23:48 25 is from inhaling asbestos dust; correct?

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10:21:20 1 word from doctors as to what the condition of
 10:21:22 2 particular workers was?
 10:21:26 3 A I really don't recall. It's possible, but
 10:21:28 4 I don't recall the --
 10:21:30 5 Q Do you recall any particular individuals
 10:21:34 6 before 1956 who had difficulty with breathing?
 10:21:36 7 A I recall particular individuals, but I
 10:21:36 8 don't know whether it would have been before or
 10:21:38 9 after 1956.
 10:21:42 10 Q How about Mr. Joughin, is it?
 10:21:42 11 A Jouckin.
 10:21:46 12 Q Jouckin. Did he die in 1952?
 10:21:52 13 A Probably. He died certainly about that
 10:21:52 14 time.
 10:21:54 15 Q Did he die of lung disease?
 10:22:00 16 A He died of tuberculosis.
 10:22:00 17 Q Do you know who diagnosed -- who called it
 10:22:04 18 tuberculosis? Was that a local doctor?
 10:22:06 19 A At the time of his death, he was a patient
 10:22:16 20 at the State tubercular hospital in Warm Springs.
 10:22:18 21 No.
 10:22:18 22 Q Galen?
 10:22:22 23 A In Galen. Yes, sir.
 10:22:26 24 Q Was his disease related to the dust at
 10:22:26 25 Libby in any way?

10:23:48 1 A Yes, sir.
 10:23:52 2 Q And the company also knew there were
 10:24:00 3 workers at Zonolite who were inhaling asbestos dust;
 10:24:02 4 correct?
 10:24:02 5 A Yes, sir.
 10:24:04 6 Q In 1956 were you aware that Drinker and
 10:24:08 7 Hatch, 1954, which was cited in the report,
 10:24:12 8 Exhibit 17, showed studies in England with 160
 10:24:16 9 deaths from asbestosis?
 10:24:26 10 A I don't know. Is that in this report?
 10:24:30 11 Q No. I'm asking you if you were aware that
 10:24:34 12 the Drinker and Hatch reference in this report
 10:24:40 13 discussed studies in England which showed 160 deaths
 10:24:44 14 due to asbestosis with an average age of
 10:24:46 15 forty-eight.
 10:24:46 16 MR. GRAHAM: I would object to the
 10:24:50 17 form of question on the basis it's an attempt to
 10:24:54 18 introduce hearsay evidence through this witness. If
 10:24:58 19 you have the report, I'd prefer that you show it to
 10:24:58 20 the witness.
 10:25:02 21 Go ahead and answer it, Earl, if you can.
 10:25:02 22 THE WITNESS: I don't have any
 10:25:06 23 recollection that we were aware of that.
 10:25:08 24 BY MR. HEBERLING:
 10:25:10 25 Q Okay. I'm now showing you a copy of

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10:25:18 1 Drinker and Hatch, 1954, by the McGraw-Hill Book
10:25:20 2 Company.

10:25:22 3 MR. GRAHAM: Do you want him to
10:25:24 4 review the whole document so that he can testify to
10:25:26 5 that?

10:25:28 6 BY MR. HEBERLING:

10:25:32 7 Q Take a look at its format, and I'll ask
10:25:36 8 you whether you've ever seen this book before.

10:25:38 9 A No, sir, I've never seen this before.

10:25:44 10 Q Okay. So is it fair to say that you
10:25:46 11 didn't obtain this after 1956 either? Correct?

10:25:50 12 A I've never seen it before.

10:26:00 13 Q Okay. As of 1956 or, say, the late '50s,
10:26:02 14 who in Libby was responsible for collecting
10:26:06 15 literature on asbestos hazards?

10:26:08 16 MR. GRAHAM: Assumes facts.

10:26:10 17 MR. MURPHY: Object to the form.

10:26:12 18 THE WITNESS: Well, I don't know that
10:26:16 19 anybody had that specific responsibility, but,
10:26:18 20 certainly, if someone was going to be responsible,
10:26:22 21 it would have to be the general manager.

10:26:24 22 BY MR. HEBERLING:

10:26:28 23 Q Do you know if -- up to 1963, when Grace
10:26:32 24 took over, whether anyone in Libby collected
10:26:36 25 literature on industrial hygiene relating to

10:26:34 1 continuously off the rafters." Did you see that
10:26:34 2 happening?

10:26:34 3 A Yes, sir.

10:26:38 4 Q And what was your understanding of the
10:26:40 5 cure for this problem as of '56?

10:26:44 6 A Well, to remove that dust so it couldn't
10:26:46 7 fall off.

10:26:50 8 Q Okay. Then No. 2, it says, "Rubber
10:26:54 9 connectors between the vibrating screens and the
10:26:58 10 feed spouts are not tight." Now, in the dry mill
10:27:02 11 what would vibrating screens and feed spouts be?

10:27:04 12 A They would be for the purpose of sizing
10:27:06 13 the material that came across them.

10:27:10 14 Q So ore would come across them, and some
10:27:14 15 would fall down through the screens, and some wo
10:27:16 16 pass on?

10:27:16 17 A Yes, sir.

10:27:20 18 Q Okay. Then there's mention of rubber
10:27:24 19 connectors. What would the rubber connectors hav
10:27:26 20 to do with dust control?

10:27:30 21 A Well, the dust collection system, on the
10:27:34 22 upper part of the screen, there were hoods, and
10:27:38 23 these hoods were ventilated much like -- There wo
10:27:42 24 be an air stream coming across them and going int
10:27:46 25 removing the dust from the screen and putting it

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10:26:40 1 asbestos or medical literature relating to asbestos?

10:26:42 2 A No, sir, I don't know that.

10:27:06 3 Q Back to the 1956 report, page four. Under
10:27:10 4 "Conclusions and Recommendations," about five lines
10:27:12 5 down, do you see where it says, "The following are
10:27:16 6 several reasons why the dustiness in the dry mill is
10:27:22 7 heavy and why the exhaust mechanism as designed does
10:27:24 8 not function"? Do you see that?

10:27:24 9 A Yes, sir.

10:27:26 10 Q Then the first reason talks about the
10:27:34 11 rafters loaded with dust. Do you see that?

10:27:34 12 A Yes, sir.

10:27:36 13 Q Did you see rafters loaded with dust in
10:27:36 14 the late '50s?

10:27:36 15 A Yes, sir.

10:27:38 16 Q Did you understand how this contributed to
10:27:42 17 the dustiness in the air?

10:27:42 18 MR. MURPHY: Objection. Vague and
10:27:46 19 ambiguous.

10:27:48 20 THE WITNESS: Well, it would be
10:27:52 21 because of the dust in the air that the rafters
10:27:54 22 would be coated with dust. It would settle on those
10:27:56 23 rafters.

10:27:56 24 BY MR. HEBERLING:

10:28:00 25 Q And then it says, "Dust vibrates almost

10:29:24 1 into a cyclone where it could be settled out and no
10:29:24 2 go into the atmosphere.

10:29:28 3 Q Is that sort of like a hood on a kitchen
10:29:30 4 stove?

10:29:30 5 A Yes, sir.

10:29:34 6 Q Okay. And then what do the rubber
10:29:36 7 connectors have to do with dust control?

10:29:40 8 A Well, the hood -- The air coming across
10:29:44 9 that, going out of those screens, has to go
10:29:48 10 somewhere, and so the rubber connectors would
10:29:52 11 connect this hood, which was vibrating with the
10:29:54 12 screen, to the collection system.

10:30:00 13 Q Okay. And so would the cure for the
10:30:04 14 rubber connectors problem be simply to maintain
10:30:04 15 better and replace as necessary?

10:30:06 16 A Yes, sir.

10:30:12 17 Q Okay. Then No. 4 talks about, "Exhaust
10:30:16 18 from some of the vibrators is insufficient". Is the
10:30:18 19 exhaust a part of the ventilation system?

10:30:20 20 A Yes, sir.

10:30:24 21 Q So is it possible that a larger fan would
10:30:26 22 be required to run the ventilation system?

10:30:28 23 A Yes, sir.

10:30:42 24 Q Above, under "Conclusions," line three, it
10:30:52 25 says, The exhaust mechanism "was well designed

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10:31:00 1 originally, but under the handicap to which this
 10:31:02 2 exhaust mechanism is subjected, it cannot and does
 10:31:04 3 not function properly." Do you see that?
 10:31:06 4 A What number is that, please?
 10:31:08 5 Q I went up on the initial paragraph right
 10:31:10 6 under "Conclusions," above No. 1.
 10:31:14 7 A Yes, sir, I see that.
 10:31:16 8 Q So in order to have the ventilation system
 10:31:20 9 function better, might that require a larger fan?
 10:31:26 10 A Well, I think in this case it refers to
 10:31:30 11 better maintenance being paid to the system itself,
 10:31:34 12 like tightening or replacing the rubber connectors
 10:31:40 13 and that sort of thing, rather than the fan
 10:31:42 14 capability.
 10:31:44 15 Q And would increasing the fan capacity help
 10:31:46 16 too?
 10:31:46 17 A Yes, sir.
 10:31:50 18 Q And nine years later, in 1965, did the
 10:31:52 19 company install a larger fan?
 10:31:52 20 A Yes, sir.
 10:31:58 21 Q No. 5, it says, "Backs are off many of the
 10:32:02 22 vibrators." Is that, again, the vibrating screens?
 10:32:02 23 A Yes, sir.
 10:32:06 24 Q Would the cure to that simply be to put
 10:32:08 25 the backs back on the vibrators?

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10:32:10 1 A Yes, sir.
 10:32:14 2 Q And No. 6 talks about holes in conveyor
 10:32:18 3 pipes. So did you have conveyor pipes where the ore
 10:32:20 4 would move from area to area?
 10:32:30 5 A I think that the conveyor pipes would be
 10:32:32 6 the pipes which were for the conveyance of air
 10:32:34 7 rather than of material.
 10:32:38 8 Q Okay. And then it talks about "Where
 10:32:40 9 holes have been cut into the pipes at random
 10:32:44 10 locations". Do you see that? It's the third line
 10:32:46 11 of No. 6.
 10:32:48 12 A Yes, sir. I see that.
 10:32:52 13 Q Why would holes have been cut into the
 10:32:52 14 pipes?
 10:32:58 15 A Well, I don't know that this means that
 10:33:02 16 they were literally cut in there. I think the holes
 10:33:06 17 could have been worn in there by the friction of the
 10:33:08 18 material which was being conveyed. I don't know
 10:33:08 19 which it means.
 10:33:12 20 Q And would the cure for that simply be to
 10:33:14 21 fix the holes?
 10:33:14 22 A Yes, sir.
 10:33:20 23 Q Then No. 7 talks about hoods being broken.
 10:33:20 24 A Uh-huh.
 10:33:24 25 Q And would the cure for that simply be to

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10:33:26 1 fix the hoods?
 10:33:26 2 A Yes, sir.
 10:33:30 3 Q Then No. 9, it says there, "Many of the
 10:33:32 4 dead ends in the exhaust system were left open,
 10:33:38 5 permitting a large volume of air to be drawn in
 10:33:40 6 through openings where no control was necessary."
 10:33:44 7 Do you see how that would reduce the efficiency of
 10:33:44 8 the ventilation system?
 10:33:44 9 A Yes, sir.
 10:33:46 10 Q What would be the cure to that?
 10:33:48 11 A To plug up those ends.
 10:33:54 12 Q Then No. 10 says, "In many (of the)
 10:33:56 13 locations, it was obvious that the dust collection
 10:34:00 14 mechanism was full of dirt or dust." Do you see
 10:34:00 15 that?
 10:34:00 16 A Yes, sir.
 10:34:04 17 Q Did you see that condition in the dry mill
 10:34:04 18 yourself?
 10:34:06 19 A I don't recall it, no.
 10:34:16 20 Q But, anyway, would the cure for that be
 10:34:16 21 simply to clean out the areas where the dust
 10:34:18 22 collection mechanism was full of dirt?
 10:34:18 23 A Yes, sir.
 10:34:28 24 Q And moving to page five in the report, at
 10:34:32 25 the bottom there's a recommendation under No. 6 at

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10:34:36 1 the bottom of page five. It says "That a system of
 10:34:40 2 vacuum cleaning or other cleaning of the rafters in
 10:34:42 3 the entire mill be instituted." Do you see that?
 10:34:42 4 A Yes, sir.
 10:34:50 5 Q In the late '50s was there discussion of
 10:34:52 6 getting a vacuum cleaning system?
 10:34:54 7 A Yes, sir.
 10:34:56 8 Q And was one obtained?
 10:34:56 9 A I believe there was, yes, sir.
 10:35:02 10 Q And wasn't that until much later, in the
 10:35:06 11 mid-'50s, that you first obtained a portable vacuum
 10:35:08 12 cleaner?
 10:35:08 13 A I don't recall.
 10:35:10 14 MR. MURPHY: Excuse me. Objection to
 10:35:12 15 the form of the question. You said "Much later,"
 10:35:16 16 middle '50s, and we're talking about a '56 report.
 10:35:18 17 BY MR. HEBERLING:
 10:35:20 18 Q Did I say middle '50s? I meant middle
 10:35:22 19 '60s. Excuse me.
 10:35:22 20 A I don't recall.
 10:35:24 21 Q Do you recall any discussion among
 10:35:32 22 management as to whether to get a vacuum cleaning
 10:35:34 23 system as of the late '50s?
 10:35:38 24 A Yes, I do. I remember discussions on it.
 10:35:40 25 I don't remember the time.

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10:35:40 1 Q Do you remember the result?
 10:35:46 2 A We got one. We got a vacuum cleaner
 10:35:48 3 system, as a matter of fact, a couple of them, but
 10:35:54 4 the results of their use was not what had been hoped
 10:35:54 5 for.
 10:36:00 6 Q Okay. What is your recollection on when a
 10:36:02 7 vacuum system was first obtained?
 10:36:04 8 A I don't recall.
 10:36:10 9 Q And you mentioned that the vacuum system
 10:36:10 10 had some difficulties?
 10:36:12 11 A Yes, sir.
 10:36:12 12 Q What was that?
 10:36:16 13 A Well, one thing that was done -- And,
 10:36:18 14 again, I don't recall the date, but they tried to
 10:36:24 15 put a stationary vacuum system in with the
 10:36:26 16 connections on each floor, and because of the
 10:36:30 17 vibrations in the mill, the system could not be kept
 10:36:34 18 intact. It would keep separating.
 10:36:36 19 Another thing that was done on the
 10:36:42 20 portable vacuum systems, which they tried, is --
 10:36:44 21 There was always a problem on the disposal of the
 10:36:50 22 dust which was collected, in handling it and
 10:36:54 23 disposing of that. Just like any vacuum cleaner,
 10:36:56 24 they have to be emptied periodically, and that was
 10:37:02 25 the system that -- There was not a practical

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10:37:04 1 solution for it, as I recall.
 10:37:08 2 Q Okay. On the in-wall system, was that a
 10:37:12 3 system where there were vacuum cleaner pipes in the
 10:37:14 4 walls, and then the vacuum cleaner could be attached
 10:37:18 5 to an outlet in the wall?
 10:37:18 6 A Yes, sir.
 10:37:24 7 Q Much like an in-built house system can be?
 10:37:24 8 A Yes, sir.
 10:37:26 9 Q Was that done in the early '70s?
 10:37:28 10 A I don't recall when it was done. I think
 10:37:30 11 it was done before that. I'm sure it was before
 10:37:30 12 that.
 10:37:38 13 Q And that's the one that vibrated apart; is
 14 that right?
 10:37:38 15 A Yes.
 10:37:38 16 Q And the portable vacuum cleaner, you say
 10:37:40 17 there was a problem emptying it?
 10:37:40 18 A Yes, sir.
 10:37:42 19 Q Is it because it filled up so quickly?
 10:37:44 20 A Yes, sir.
 10:37:46 21 Q And what was the problem? Why couldn't it
 10:37:48 22 just be emptied over and over and over again?
 10:37:50 23 A Like where? How do you dispose of it?
 10:37:54 24 That was the problem. Where do you empty the dust,
 10:37:56 25 and how do you dispose of it?

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10:37:58 1 Q There was never a solution to that?
 10:38:02 2 A Not in -- No, sir. This mill was a
 10:38:06 3 seven-story building, and if you have somethi
 10:38:10 4 the top story, how do you get rid of that dust?
 10:38:12 5 Q Would it be possible for someone to car
 10:38:14 6 it down the elevator?
 10:38:16 7 A There was no elevator in that mill.
 10:38:18 8 Q Was it a staircase down?
 10:38:18 9 A Yes, sir.
 10:38:22 10 Q So someone would have to carry the dus
 10:38:22 11 down?
 10:38:24 12 A Yes, sir.
 10:38:26 13 Q And what was the problem there, lack o
 10:38:26 14 manpower?
 10:38:30 15 A Well, just the quantity that was
 10:38:34 16 involved. It was, from a practical standpoint,
 10:38:36 17 getting it down and getting it disposed of.
 10:38:40 18 Q From a practical standpoint? You mean
 10:38:42 19 number of men that would have been required
 10:38:42 20 A Yes, sir.
 10:38:46 21 Q Was that an unreasonable amount of we
 10:38:48 22 to devote to this task?
 10:38:50 23 MR. GRAHAM: I'd object. Calls for
 10:38:52 24 speculation. Calls for an opinion. Calls for a
 10:38:54 25 conclusion.

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10:38:56 1 Go ahead and answer it to the extent you
 10:38:56 2 can.
 10:38:58 3 THE WITNESS: I can't answer. I
 10:38:58 4 don't know.
 10:39:00 5 BY MR. HEBERLING:
 10:39:02 6 Q Was there a decision by management that it
 10:39:06 7 would cost too much in worker time to carry the d
 10:39:06 8 down the floors -- down the stairs?
 10:39:14 9 A Well, there was a decision, and I don't
 10:39:16 10 know that the decision was based on the cost that
 10:39:20 11 would take. Just from a practical standpoint, How
 10:39:24 12 do you do it? more than what the cost would be
 10:39:24 13 involved.
 10:39:26 14 Q And what were the practical problems?
 10:39:28 15 A Getting rid of the dust.
 10:39:30 16 Q You mean where to take it after it left
 10:39:32 17 the dry mill?
 10:39:32 18 A Yes, sir.
 10:39:34 19 Q Did you have dumps?
 10:39:38 20 A Well, you could certainly build a dump.
 10:39:46 21 Q Do you know when this decision that it
 10:39:50 22 would be impractical to empty the portable vacuu
 10:39:52 23 cleaner so many times was made?
 10:39:52 24 A No, sir.
 10:39:56 25 Q Can you say? Was that in the '60s?

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10-39:56 1 A I don't know.
 2 Q You don't know?
 10-39:56 3 A I don't recall.
 10-39:58 4 Q Do you know who made the decision?
 10-40:00 5 A Well, local management.
 10-40:02 6 Q Were you in on the decision?
 10-40:06 7 A Not directly, I don't believe, but I would
 8 have been aware of it.
 10-40:14 9 Q Do you know, in connection with that
 10-40:18 10 decision, whether any industrial hygiene engineer
 10-40:20 11 was consulted?
 10-40:22 12 A No, sir, I don't know. I don't recall.
 10-40:22 13 Q Then page six, Item 7, it says "That until
 10-40:24 14 such time as the repair and maintenance of both the
 10-40:24 15 exhaust and ore conveying systems have been
 10-40:28 16 completed, all the men in the dry mill be provided
 10-41:02 17 with or required to wear an adequate respirator".
 10-41:04 18 Do you see that?
 10-41:04 19 A Yes, sir.
 10-41:10 20 Q Since that's a recommendation, does that
 10-41:14 21 mean that that was not being done as of 1956?
 10-41:16 22 A No, sir, it does not mean that.
 10-41:22 23 Q Was it your understanding that most men in
 10-41:24 24 the dry mill were wearing respirators most of the
 10-41:28 25 time as of 1956?

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10-41:30 1 A Yes, sir. The instructions were for the
 10-41:32 2 men to be wearing respirators.
 10-41:34 3 Q And did you understand as of 1956 that a
 10-41:44 4 respirator is a temporary measure and is not a
 10-41:46 5 substitute for dust control?
 10-41:46 6 A Yes, sir.
 10-42:02 7 Q Back to the first page of No. 17, the
 10-42:04 8 first page of the report. Do you see where it says,
 10-42:06 9 "This report is confidential and is not for
 10-42:10 10 distribution except to the management of the
 10-42:10 11 Zonolite Company"?
 10-42:12 12 A Yes, sir.
 10-42:16 13 Q Now, was this confidentiality established
 10-42:20 14 per agreement between the company and the Board of
 15 Health?
 10-42:20 16 A No, sir.
 10-42:26 17 Q Was it a condition the company placed on
 10-42:26 18 having the inspection?
 10-42:26 19 A No, sir.
 10-42:30 20 Q How did the confidential statement get
 10-42:30 21 there?
 10-42:34 22 A The Board of Health placed it there. I
 10-42:36 23 don't --
 10-42:36 24 Q Did you have any discussions with the
 10-42:42 25 Board of Health representatives as to whether this

10-42:42 1 be confidential or not?
 10-42:46 2 A No, sir. Not that I -- Not to my
 10-42:46 3 knowledge.
 10-43:14 4 Q So if Mr. Bleich, plant manager, had a
 10-43:16 5 conversation with the Board of Health
 10-43:16 6 representatives regarding this, you were unaware of
 10-43:16 7 it?
 10-43:16 8 A Yes.
 10-43:18 9 MR. GRAHAM: Objection. Calls for
 10-43:18 10 gross speculation.
 10-43:20 11 Go ahead and answer.
 10-43:20 12 THE WITNESS: I'm certainly not aware
 10-43:20 13 of it.
 10-43:20 14 BY MR. HEBERLING:
 10-43:22 15 Q Did Zonolite management keep the report
 10-43:22 16 confidential?
 10-43:26 17 A Well, I believe so, yes.
 10-43:28 18 Q Was the report disseminated to the
 10-43:28 19 employees?
 10-43:30 20 A No, sir.
 10-43:34 21 Q Did Zonolite management object to this
 10-43:34 22 report?
 10-43:36 23 A No.
 10-43:38 24 Q As you recall?
 10-43:38 25 A No, sir.

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10-43:44 1 Q Did Zonolite management agree that the
 10-43:50 2 ventilation system was not functional as of '56?
 10-43:52 3 MR. MURPHY: Object to the form of
 10-43:54 4 the question.
 10-43:56 5 BY MR. HEBERLING:
 10-43:58 6 Q Perhaps I should refresh your
 10-44:02 7 recollection. I read you a statement at page four
 10-44:08 8 of the report, line five, where they're talking
 10-44:10 9 about the ventilation system. It says it does not
 10-44:14 10 function properly, and so my question is whether
 10-44:18 11 Zonolite management was in agreement that the
 10-44:20 12 ventilation system did not function properly.
 10-44:22 13 MR. GRAHAM: Object to the form
 10-44:22 14 again.
 10-44:24 15 Go ahead and answer.
 10-44:30 16 THE WITNESS: Well, yes. I believe
 10-44:32 17 that they would agree that these things as outlined
 10-44:34 18 here are accurate.
 19 BY MR. HEBERLING:
 10-44:40 20 Q In 1956 did the company disclose to the
 10-44:42 21 employees that asbestos and the dust in the air was
 10-44:44 22 toxic?
 10-44:46 23 A Not that I recall, no, sir.
 10-44:58 24 Q Would you agree that, as of 1956 in the
 10-45:02 25 dry mill, it was not a healthy environment to work

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0-45:02 1 in?

0-45:04 2 A Yes, sir, I would agree with that.

0-45:12 3 Q As of 1956, did Zonolite do anything to

0-45:16 4 inform the employees what asbestosis was?

0-45:18 5 A Not that I recall, no, sir.

0-45:24 6 Q Now, before 1963 did Zonolite have a

0-45:24 7 safety committee?

10-45:24 8 A Yes, sir.

10-45:26 9 Q Were you a member?

10-45:26 10 A Yes, sir.

10-45:30 11 Q Can you say during what period of time you

10-45:32 12 were a member of the safety committee?

10-45:34 13 A No, sir. I don't recall.

10-45:36 14 Q Were you a member in the '50s?

10-45:36 15 A Probably, yes.

10-45:42 16 Q And were you a member up to the mid-'60s?

10-45:44 17 A Probably, yes.

10-45:50 18 Q Would you have began to be a member when

10-45:52 19 you became assistant manager in 1954?

10-45:54 20 A I don't know.

10-46:02 21 Q Were there workers who were members of the

10-46:04 22 safety committee as well?

10-46:04 23 A Yes, sir.

10-46:06 24 Q What did the safety committee do in the

10-46:06 25 '50s?

10-47:38 1 record at approximately 10:47.

10-47:38 2 (Brief recess.)

11-04:30 3 THE VIDEOGRAPHER: We're back on the

11-04:36 4 record, and it's approximately 11:04.

11-04:38 5 BY MR. HEBERLING:

11-05:02 6 Q Please refer to Exhibit 18. Does this

11-05:04 7 appear to be a document which lists mill equipment

11-05:10 8 and includes some drawings of the placement of the

11-05:10 9 equipment?

11-05:16 10 A Yes, sir, that's what it appears to be.

11-05:20 11 Q Is this a document that you saw at

11-05:24 12 Zonolite in the late '50s?

11-05:26 13 A I don't ever recall seeing this before.

11-05:30 14 It's possible I did, but I don't remember it.

11-05:34 15 Q Do you recall seeing similar drawings of

11-05:36 16 the placement of mill equipment?

11-05:42 17 A No, sir, I don't.

11-05:42 18 Q As far as a drawing of the dry mill and

11-05:46 19 its various floors and the location of equipment,

11-05:50 20 was there a more formal set of drawings than what

11-05:50 21 you see here?

11-05:56 22 A In some cases there would have been, but

11-06:02 23 the way that that mill was built and grew, something

11-06:04 24 like topsy, there would have been an incomplete set

11-06:12 25 of as-built drawings for the mill.

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10-46:10 1 A Well, they met periodically, I think

10-46:18 2 generally monthly, and they -- The members of the

10-46:22 3 safety committee would actually do an inspection

10-46:24 4 each month of the operations, and anything that they

10-46:28 5 deemed to be unsafe they would record and turn into

10-46:30 6 management for correction, if possible.

10-46:36 7 Q Did you review the 1956 State Department

10-46:40 8 of Health report with the safety committee?

10-46:42 9 A Probably not as a report.

10-46:48 10 Q Did you ever discuss with the safety

10-46:50 11 committee the matter of asbestos in the dust?

10-46:52 12 A I don't recall, no, sir.

10-47:00 13 Q Did you discuss, generally, the dust

10-47:00 14 problem?

10-47:00 15 A Yes.

10-47:04 16 Q Without discussing it as asbestos dust?

10-47:06 17 A Yes, sir.

10-47:12 18 Q And was that true through the rest of your

10-47:16 19 years on the safety committee up to the mid-'60s?

10-47:16 20 A Probably, yes.

10-47:26 21 Q Let's go to Exhibit 19.

10-47:28 22 A Before we do that, can we have another

10-47:30 23 break, please?

10-47:30 24 Q Sure.

10-47:34 25 THE VIDEOGRAPHER: Going off the

11-06:16 1 Q Do you know where the incomplete set of

11-06:18 2 as-built drawings may be now?

11-06:22 3 A I didn't say there was. I said that's all

11-06:24 4 there could have been. There would not have been

11-06:26 5 as-built drawings.

11-06:28 6 Q Have you seen any drawings of the dry

11-06:30 7 mill, say, in the last ten years?

11-06:32 8 A No, sir.

11-06:34 9 Q Do you know where any might be?

11-06:34 10 A No, sir.

11-06:40 11 Q Let's go to Exhibit 19. Does this appear

11-06:42 12 to be a tentative outline of a safety program dated

11-06:46 13 March 13, 1957?

11-06:54 14 A Yes, sir.

11-07:00 15 Q Is this a document you likely saw in 1957

11-07:02 16 in Libby?

11-07:02 17 A Yes, sir.

11-07:16 18 Q Let's go on to Exhibit 20. Does this

11-07:24 19 appear to be a letter from Mr. Gaudin, G-A-U-D-I-N,

11-07:30 20 to Mr. Kelley, executive vice-president of Zonolite,

11-07:32 21 dated June 26, 1957?

11-07:32 22 A Yes, sir.

11-07:34 23 Q Is this a document that you saw at Libby

11-07:36 24 in the 1950s?

11-07:36 25 A Yes, sir.

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11:07:38 1 Q Is it likely you saw it on or about its
 11:07:40 2 date?
 11:07:40 3 A Yes, sir.
 11:07:50 4 Q Let's go to Exhibit 21. Does this appear
 11:07:54 5 to be a letter of Ben Wake to Mr. Bleich, manager of
 11:07:58 6 Zonolite, dated January 12, 1959?
 11:07:58 7 A Yes, sir.
 11:08:00 8 Q And did you see this and the attached
 11:08:06 9 report at or about its date?
 11:08:06 10 A Probably, yes, sir.
 11:08:22 11 Q Let's go to page one of the report. Do
 11:08:28 12 you see, just above "Concentrations," two-thirds of
 11:08:32 13 the way down and then two lines up from that, "The
 11:08:34 14 wet mill was off the line or out of operation for
 11:08:38 15 that period, thereby, reducing dustiness
 11:08:40 16 considerably"? Do you see that?
 11:08:40 17 A Yes, sir.
 11:08:44 18 Q And then there's mention in that same
 11:08:52 19 paragraph just above what I read, Ore from Bin
 11:08:58 20 No. 1. Were there five bins for five sizes of ore?
 11:09:02 21 A There were five bins, but they were not
 11:09:16 22 for sizes of ore. They were for different blends or
 11:09:18 23 different types of ore. Those bins would have been
 11:09:18 24 for storing mill feed, not concentrate.
 11:09:18 25 Q Were there five sizes of concentrate or

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11:09:20 1 five grades?
 11:09:20 2 A Of concentrate, yes.
 11:09:24 3 Q And which was the smallest, No. 1 or
 11:09:26 4 No. 5?
 11:09:26 5 A No. 5.
 11:09:30 6 Q So would it be fair to say that No. 5,
 11:09:36 7 being the smallest, would generate the most dust
 11:09:36 8 when it was moved?
 11:09:44 9 A Probably, yes.
 11:09:52 10 Q Okay. Then, under "Concentrations," five
 11:09:56 11 lines down, there's a sentence beginning, "The
 11:09:58 12 percentage of airborne asbestos was determined to be
 11:10:04 13 in a concentration of from 12 on 31 percent with an
 11:10:10 14 average being approximately 27 percent." Do you see
 11:10:12 15 that?
 11:10:12 16 A Yes, sir.
 11:10:14 17 Q Then in the last line, it says, "Those
 11:10:18 18 particles that were so small that their rod-like
 11:10:20 19 appearance could not be observed were not counted as
 11:10:24 20 asbestos but were evaluated as (in the) overall dust
 11:10:30 21 level." Do you see that? That's the very last line
 11:10:30 22 of page one.
 11:10:32 23 MR. GRAHAM: I would object to the
 11:10:34 24 form of the questioning on the basis that the
 11:10:40 25 document speaks for itself. It's improper

11:10:40 1 questioning.
 11:10:42 2 Go ahead and answer it, Earl.
 11:10:44 3 THE WITNESS: Yes, sir, I see that.
 4 BY MR. HEBERLING:
 11:10:44 5 Q So was it your understanding that the
 11:10:58 6 average 27 percent asbestos in the dust in the air
 11:11:00 7 did not include the small particles which were not
 11:11:00 8 counted as asbestos?
 11:11:00 9 MR. GRAHAM: Objection. Foundation.
 11:11:02 10 Go ahead and answer, if you can.
 11:11:02 11 THE WITNESS: I don't know whether
 11:11:04 12 that would be true or not.
 11:11:04 13 BY MR. HEBERLING:
 11:11:08 14 Q Then page two, do you see a table of
 11:11:10 15 samples taken, 13 samples?
 11:11:10 16 A Yes, sir.
 11:11:14 17 Q And at the bottom it says "Maximum
 11:11:20 18 Allowable Concentration, Asbestos Dust, 5.0"?
 11:11:20 19 A Yes.
 11:11:22 20 Q And then, for example, the first three
 11:11:26 21 samples, do you see that that exceeds the standard
 11:11:26 22 of five?
 11:11:28 23 A Yes, sir.
 11:11:46 24 Q Then page three -- Pages three, four and
 11:11:50 25 five, do you see where this report goes into

11:11:54 1 considerable detail as to which screens by number
 11:11:58 2 and which machines were leaking dust?
 11:12:00 3 A Yes, sir. I see that.
 11:12:06 4 Q Did you go along on this inspection? Do
 5 you know?
 11:12:10 6 A I don't know, but probably not.
 11:12:18 7 Q And did Zonolite dispute this report?
 11:12:20 8 A No, sir.
 11:12:26 9 Q So is it fair to say that Zonolite agreed
 11:12:30 10 that there were, it appears, dozens of places that
 11:12:34 11 needed repair as of the date of this report?
 11:12:36 12 MR. MURPHY: Object to the form of
 11:12:38 13 the question.
 11:12:40 14 THE WITNESS: Zonolite didn't object
 11:12:42 15 to it, but that doesn't necessarily mean that they
 11:12:44 16 agreed with it all.
 11:12:46 17 BY MR. HEBERLING:
 11:12:52 18 Q Okay. Then page seven, in the middle of
 11:12:54 19 page, do you see where it says, "All of the
 11:12:58 20 locations enumerated were those that were apparent
 11:13:00 21 as major offenders in either production of dust or
 11:13:04 22 in the sacrifice of exhaust capacity which permitted
 11:13:06 23 dust to be generated at points that should have been
 11:13:14 24 controlled as designed. The points enumerated were
 11:13:14 25 not all of the locations where dust was produced,

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11:13:16 1 nor were they all the circumstances that permitted
 11:13:20 2 the escape of dust." Do you see that?
 11:13:20 3 A Yes, sir.
 11:13:28 4 Q Okay. Then under "Toxicity," it says
 11:13:30 5 "According to Ellman," and there's a cite to
 11:13:36 6 Ellman, Pulmonary Asbestosis, 1933. Do you see
 11:13:36 7 that?
 11:13:36 8 A Yes, sir.
 11:13:38 9 Q Does that appear to be an article in The
 11:13:40 10 Journal of Industrial Hygiene?
 11:13:40 11 A Yes, sir.
 11:13:44 12 Q Do you know if you had a copy of that
 11:13:44 13 article in Libby in 1959?
 11:13:46 14 A No, sir, I don't know.
 11:13:48 15 Q Do you know if one was obtained after this
 11:13:50 16 report cited it?
 11:14:18 17 A Not to my knowledge, no, sir.
 11:14:20 18 Q It says, "According to Ellman, 'Inhalation
 11:14:22 19 of asbestosis must be expected sooner or later to
 11:14:22 20 produce pulmonary fibrosis, depending upon
 11:14:24 21 (a) length of exposure and (b) nature and
 11:14:26 22 concentration of the dust. Pulmonary asbestosis,
 11:14:26 23 once established, is a progressive disease with a
 11:14:28 24 bad prognosis. Its treatment can be only
 11:14:28 25 symptomatic.'" Do you see that?

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11:14:28 1 A Yes, sir.
 11:14:30 2 MR. GRAHAM: Objection. Improper
 11:14:30 3 examination.
 11:14:30 4 THE WITNESS: I see it, yes, sir.
 11:14:32 5 BY MR. HEBERLING:
 11:14:32 6 Q Was this the first time, in 1959, that you
 11:14:34 7 learned that asbestosis was a disease with a bad
 11:14:34 8 prognosis?
 11:14:36 9 A I don't recall.
 11:14:40 10 Q You don't recall whether you had some
 11:14:44 11 understanding that maybe people could get over this
 11:14:44 12 before '59?
 11:14:46 13 A No, sir, I don't -- That is a correct
 11:14:50 14 statement. I don't recall whether I knew this or
 11:14:50 15 not.
 11:15:02 16 Q As of the time you read this -- After you
 11:15:06 17 read this, did you discuss this with Mr. Wake at a
 11:15:06 18 conference?
 11:15:06 19 A Not that I recall, no, sir.
 11:15:12 20 Q Did you usually have a conference after
 11:15:12 21 the inspection with Mr. Wake?
 11:15:18 22 A Usually, yes. He had a termination
 11:15:18 23 conference.
 11:15:20 24 Q You just don't remember what happened in
 11:15:22 25 1959?

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11:15:22 1 A No, sir.
 11:15:24 2 Q Yes. We can understand that. When you
 11:15:28 3 read this, did you understand that the asbestos dust
 11:15:30 4 was a serious health hazard?
 11:15:30 5 A Yes, sir. We realized that.
 11:15:30 6 Q Did you realize that as early as '56?
 11:15:40 7 A It was so stated in the '56 report, and,
 11:15:42 8 yes, sir, we understood that it was a hazard.
 11:15:44 9 Q And a serious hazard?
 11:15:52 10 A Yes, sir.
 11:16:02 11 Q Then do you see at page eight
 11:16:04 12 recommendations that, again, the holes in the
 11:16:06 13 exhaust system be repaired?
 11:16:06 14 A Yes, sir.
 11:16:10 15 Q And "That constant maintenance be
 11:16:14 16 provided". In No. 2 do you see that?
 11:16:16 17 A Yes, sir.
 11:16:18 18 Q Is it your understanding that the State is
 11:16:24 19 telling you in '59 that the maintenance wasn't
 11:16:24 20 happening often enough?
 11:16:24 21 MR. MURPHY: Objection.
 11:16:26 22 MR. GRAHAM: I'd object.
 11:16:28 23 MR. MURPHY: Objection to the form.
 11:16:28 24 The report speaks for itself.
 11:16:28 25 ////

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1 BY MR. HEBERLING:

11:16:30 2 Q What was your understanding in '59? Did
 11:16:34 3 you understand that you were being told that a mor
 11:16:36 4 intensive maintenance had to be applied?
 11:16:38 5 A Yes, sir. That's what this states.
 11:16:40 6 Q And did the company do that?
 11:16:42 7 A I believe so, yes, sir.
 11:16:46 8 Q Put more manpower on maintenance?
 11:16:46 9 A Yes, sir.
 11:16:50 10 Q And then No. 3, the holes in the conveying
 11:16:54 11 pipes, basically, that's the same as we discussed
 11:16:56 12 before from the '56 report?
 11:16:58 13 A Yes, sir.
 11:17:04 14 Q And No. 4, "That all of the transfer
 11:17:06 15 points for ore being deposited to open containers
 11:17:10 16 adequately enclosed and provided with exhaust
 11:17:12 17 ventilation." What was your understanding of
 11:17:14 18 transfer points?
 11:17:26 19 A Well, a transfer point is where -- In this
 11:17:28 20 case it's ore is transferred from one means of
 11:17:32 21 conveyance to another, such as falling off the e
 11:17:38 22 of a belt or whatever it happens to be where it
 11:17:38 23 transferred from one location to another.
 11:17:42 24 Q Okay. So you understood that as being
 11:17:44 25 generally all transfer points, not just the place

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11:17:48 1 you called the transfer point where the trucks
 11:17:52 2 dumped it into a conveyance down to the dry mill?
 11:17:56 3 A No. That transfer point was an entity in
 11:17:58 4 itself, and this does not refer to that at all.
 11:18:00 5 This would be transfer points in the mill.
 11:18:04 6 Q How about transfer points outside the mill
 11:18:08 7 where the ore is being deposited into open storage?
 11:18:10 8 MR. MURPHY: Objection to the form of
 11:18:10 9 the question.
 11:18:10 10 BY MR. HEBERLING:
 11:18:12 11 Q Did you understand that those should be
 11:18:14 12 ventilated as well?
 11:18:16 13 A No, sir, and this doesn't refer to that.
 11:18:22 14 Q You understood it as being -- this report
 11:18:34 15 relating just to the dry mill?
 11:18:36 16 A Yes, sir.
 11:18:38 17 Q Then No. 5, the recommendation is repeated
 11:18:42 18 "That until such time as repair and maintenance
 11:18:46 19 of ... the exhaust and the ore conveying systems has
 11:18:50 20 been completed all the men in the dry mill be
 11:18:50 21 provided ... and ... required to be wear
 11:18:54 22 respirators". Why is this repeated if they were
 11:18:58 23 wearing respirators anyway?
 11:19:00 24 MR. MURPHY: Objection. Form.
 11:19:02 25 MR. GRAHAM: Objection. Form.

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11:19:04 1 MR. MURPHY: Object to the form of
 11:19:06 2 the question. Foundation.
 11:19:06 3 BY MR. HEBERLING:
 11:19:08 4 Q Was it your understanding the men were
 11:19:10 5 wearing respirators?
 11:19:12 6 A Yes, sir. That was one of the
 11:19:14 7 requirements. I don't know why it would be
 11:19:14 8 repeated.
 11:19:16 9 Q I believe you testified before about
 11:19:24 10 95 percent of the time while you were at Grace was
 11:19:24 11 in the office and five percent out at the mine and
 11:19:24 12 the mill?
 11:19:26 13 A Well, the bulk of my time was in the
 11:19:30 14 office, certainly, yes. Five percent, 95 percent,
 11:19:32 15 that breakdown is -- I can't dispute it.
 11:19:34 16 Q Is that reasonable?
 11:19:34 17 A I think so.
 11:19:40 18 Q So is it possible that the men were not
 11:19:42 19 wearing respirators when the supervisors weren't
 11:19:44 20 around?
 11:19:46 21 MR. MURPHY: Object to the form of
 11:19:48 22 the question. Vague and ambiguous.
 11:19:50 23 THE WITNESS: Certainly it's
 11:19:50 24 possible.
 11:19:52 25 ////

1 BY MR. HEBERLING:
 11:19:54 2 Q Did you hear problems like that?
 11:19:58 3 A Yes. We knew that that was a difficult
 11:20:02 4 rule to enforce, and the supervisors on the job did
 11:20:04 5 their best to enforce it, but it was a problem. We
 11:20:06 6 know that. We knew it.
 11:20:08 7 Q And did you know that in the '50s and
 11:20:08 8 '60s?
 11:20:10 9 A Certainly.
 11:20:16 10 Q To your knowledge was anybody ever
 11:20:20 11 disciplined for not wearing a respirator?
 11:20:26 12 A Well, I don't know what you mean by
 11:20:28 13 "Disciplined," but certainly --
 11:20:32 14 Q Let's say a written reprimand. Was there
 11:20:36 15 ever any written reprimand to an employee for not
 11:20:40 16 wearing a respirator while you were working there?
 11:20:42 17 A Not to my recollection, no, sir. I don't
 11:20:42 18 know of any.
 11:20:44 19 Q And you were the keeper -- You were in
 11:20:48 20 charge of the people who kept the records, at least
 11:20:50 21 from '54 on all the way until '83?
 11:20:54 22 A Well, yes. That would be office records,
 11:20:56 23 but, you see, up at the operation, they would have
 11:21:00 24 their own record keeping system, and I would have no
 11:21:02 25 direct supervision over that.

11:21:10 1 Q So a reprimand to an employee for not
 11:21:12 2 wearing a respirator in the mill would have been
 11:21:12 3 kept at the mill office?
 11:21:18 4 A Probably, yes.
 11:21:22 5 Q Would it have gone into his personnel
 11:21:22 6 file?
 11:21:26 7 A Not necessarily, no.
 11:21:28 8 Q Did you keep the personnel files at the
 11:21:30 9 office downtown where you were?
 11:21:32 10 A Yes, sir.
 11:21:46 11 Q So while you were at Zonolite, '54 to '83,
 11:21:48 12 was there a policy of keeping the reprimand -- any
 11:21:52 13 written reprimands on an employee in his personnel
 11:21:54 14 file?
 11:21:54 15 A No, sir, I believe not.
 11:22:02 16 Q And as to any employee who was reprimanded
 11:22:06 17 for not wearing a respirator at someplace outside
 11:22:12 18 the dry mill, where would that reprimand have ended
 11:22:12 19 up in a file?
 11:22:16 20 A Well, it would depend on where that --
 11:22:20 21 what department that employee was in, and each
 11:22:26 22 department would have their own suboffice, if you
 11:22:26 23 will.
 11:22:30 24 Q So did the construction department have a
 11:22:36 25 suboffice?

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<p>11:22:36 1 A Yes, sir.</p> <p>11:22:54 2 Q Okay. On the cover of the report, which</p> <p>11:23:00 3 is part of Exhibit 21, we have the same statement,</p> <p>11:23:02 4 The report is confidential. Do you see that?</p> <p>11:23:04 5 A Yes, sir.</p> <p>11:23:10 6 Q And, again, do you know if this was the</p> <p>11:23:12 7 company's suggestion or whether it was the State's</p> <p>11:23:14 8 suggestion to put this statement on the face of the</p> <p>11:23:16 9 report?</p> <p>11:23:18 10 A It was not the company's suggestion, no,</p> <p>11:23:20 11 sir. It would have been the doings of the</p> <p>11:23:24 12 Department of Health.</p> <p>11:23:28 13 Q Was this report, in fact, kept</p> <p>11:23:28 14 confidential by management?</p> <p>11:23:32 15 A Generally, yes, I would say so.</p> <p>11:23:38 16 Q Was this report disseminated to the</p> <p>11:23:38 17 employees?</p> <p>11:23:38 18 A No, sir.</p> <p>11:23:44 19 Q Regarding the statement from Dr. Ellman,</p> <p>11:23:48 20 the 1933 article which was quoted on the seriousness</p> <p>11:23:52 21 of asbestosis, was that disclosed to the workers in</p> <p>11:23:54 22 1959?</p> <p>11:23:56 23 MR. MURPHY: Object to the form of</p> <p>11:24:00 24 the question. It's based on hearsay.</p> <p>11:24:02 25 THE WITNESS: So far as I know, we</p>	<p>11:25:18 1 Q Okay. And do you know what Mr. Kujaw</p> <p>11:25:20 2 training was?</p> <p>11:25:24 3 A He was a graduate of the Butte School of</p> <p>11:25:26 4 Mines. I believe his major was in geology.</p> <p>11:25:28 5 Q To your knowledge did he have any train</p> <p>11:25:30 6 in industrial hygiene?</p> <p>11:25:34 7 A No specific training that I know of.</p> <p>11:25:40 8 Q Did you have some responsibility for</p> <p>11:25:42 9 safety as a member of the safety committee?</p> <p>11:25:42 10 A Yes, sir.</p> <p>11:25:42 11 Q What was that?</p> <p>11:25:46 12 A Well, I would have been -- I would have</p> <p>11:25:52 13 been responsible to see that proper records wer</p> <p>11:25:58 14 kept and the safety committee met as schedule</p> <p>11:26:00 15 the recommendations of the safety committee</p> <p>11:26:02 16 followed and carried out.</p> <p>11:26:06 17 Q Before 1963 did the company have a saf</p> <p>11:26:06 18 manual?</p> <p>11:26:08 19 A Have what?</p> <p>11:26:10 20 Q A safety manual.</p> <p>21 MR. MURPHY: Read that back, please</p> <p>22 THE VIDEOGRAPHER: Excuse me. W</p> <p>23 going to have to go off the record to change ta</p> <p>24 moment.</p> <p>25 We're going off the record at</p>
<p>11:24:06 1 never had a copy of that report, so it wouldn't have</p> <p>11:24:08 2 been disseminated to them.</p> <p>11:24:10 3 BY MR. HEBERLING:</p> <p>11:24:12 4 Q How about the statement that was quoted to</p> <p>11:24:14 5 them by the State in the 1959 report? Was that</p> <p>11:24:18 6 disclosed to the employees?</p> <p>11:24:20 7 MR. GRAHAM: Objection. Foundation.</p> <p>11:24:22 8 Competency of this witness as regards to other</p> <p>11:24:24 9 people disclosing it to the employees.</p> <p>11:24:26 10 BY MR. HEBERLING:</p> <p>11:24:26 11 Q To your knowledge.</p> <p>11:24:30 12 A To my knowledge, no, sir. I don't know</p> <p>11:24:30 13 that it was distributed to them.</p> <p>11:24:34 14 Q In 1959 who was primarily responsible for</p> <p>11:24:34 15 safety?</p> <p>11:24:42 16 A The general manager, R.A. Bleich. It</p> <p>11:24:44 17 would have been his responsibility.</p> <p>11:24:48 18 Q And what was Mr. Kujawa's responsibility</p> <p>11:24:50 19 there as chief engineer? Was safety something that</p> <p>11:24:52 20 he had specifically had responsibility for?</p> <p>11:24:54 21 A Probably, yes.</p> <p>11:25:00 22 Q And was that so up until 1963, at least?</p> <p>11:25:06 23 A Well, I don't know that he would have been</p> <p>11:25:12 24 responsible all of that period, but certainly some</p> <p>11:25:12 25 of that period he was.</p>	<p>1 approximately 11:26.</p> <p>11:26:16 2 (Brief recess.)</p> <p>11:30:10 3 THE VIDEOGRAPHER: We're back on the</p> <p>11:30:14 4 record. It's approximately 11:29.</p> <p>5 THE REPORTER: I'll go ahead and read</p> <p>6 the question back.</p> <p>7 (The reporter then read back the</p> <p>8 requested material beginning at page 95, line 17 at</p> <p>9 ending at page 95, line 20.)</p> <p>11:30:28 10 THE WITNESS: I don't really recall.</p> <p>11:30:34 11 I know that at one time the company published a</p> <p>11:30:38 12 safety manual and had it printed, but I don't really</p> <p>11:30:42 13 remember when it would have been.</p> <p>11:30:42 14 BY MR. HEBERLING:</p> <p>11:30:44 15 Q Could that have been in the '60s?</p> <p>11:30:46 16 A Yes, sir, it could have been.</p> <p>11:31:00 17 Q Let's refer to Exhibit 22.</p> <p>11:31:02 18 MR. GRAHAM: Jon, before you do that,</p> <p>11:31:06 19 back at Exhibit 20, I was just looking at that, and</p> <p>11:31:10 20 it says, "I have read the letter from Mr. Clemmon:</p> <p>11:31:14 21 (from) the Bureau of Mines" and so forth. Was t</p> <p>11:31:16 22 a copy of that letter, or is this the only document</p> <p>11:31:18 23 that you had?</p> <p>11:31:20 24 MR. HEBERLING: This is all I have.</p> <p>11:31:22 25 MR. GRAHAM: Okay. So you don't hav</p>